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LIVING WAGE TASK FORCE

Report to the Board of Supervisors

DECEMBER 16, 1999

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LIVING WAGE TASK FORCE
REPORT TO THE BOARD OF SUPERVISORS

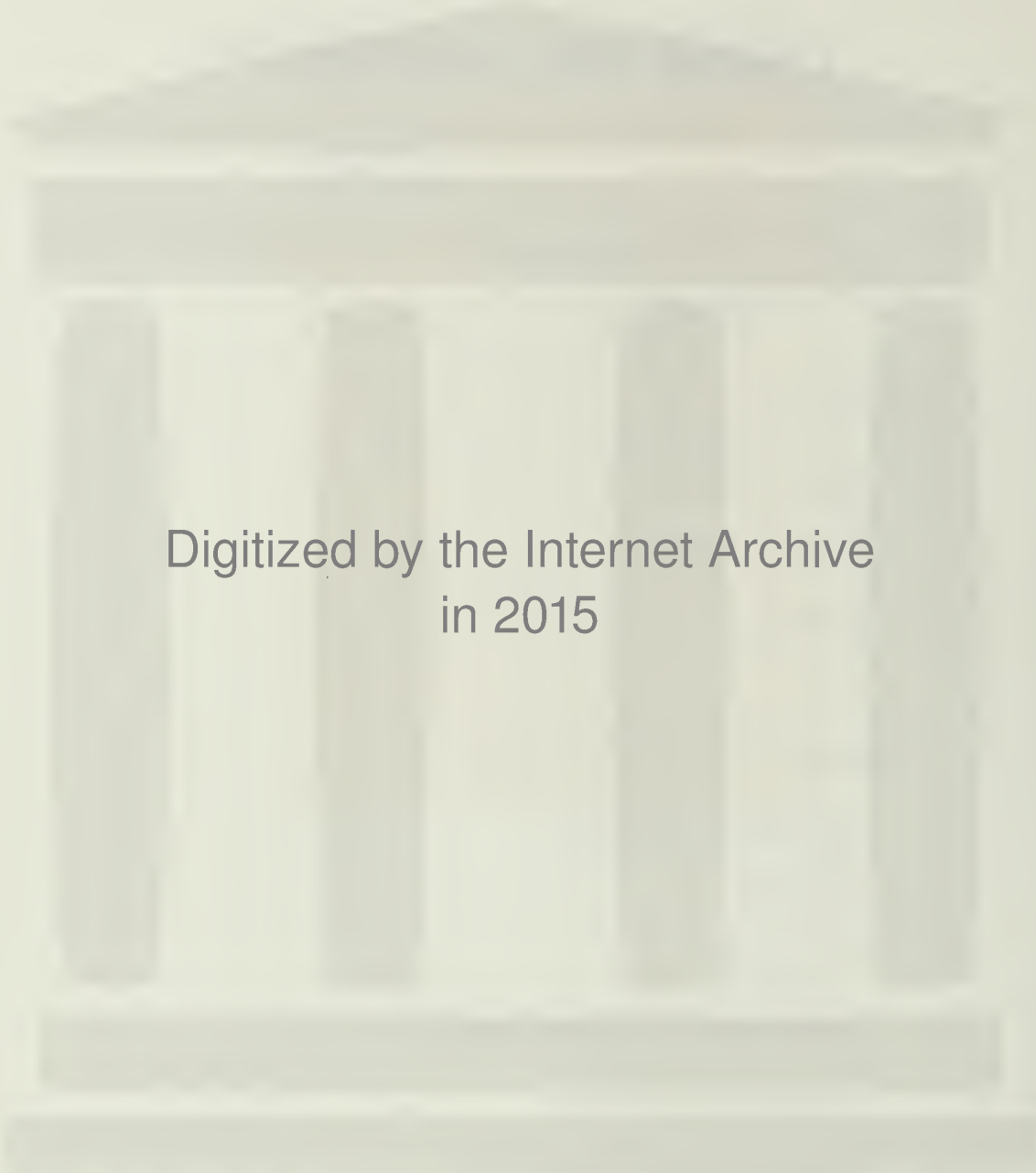
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I. EXECUTIVE SUMMARY

A resolution passed by the Board (file 98-1508) in November, 1998 created a 15-member task force to study the living wage issue. The task force is composed of 11 members appointed by each member of the Board of Supervisors and 4 members appointed by the Board as a Whole (i.e., "at-large"). The task force is charged with examining legislation, proposals and studies of the impact of living wage ordinances and reviewing City legislation prior to Board action. The original legislation mandated that the task force expire six months after approval of the resolution, however, the Board subsequently extended the term of the Task Force to December 16, 1999. The Task Force commenced business in March, 1999.

1. Background

More than 35 cities and counties have adopted some form of a "Living Wage" ordinance (LWO), including Oakland, Los Angeles, Pasadena and West Hollywood. Baltimore was the first city to adopt this requirement, doing so in 1994. Most of the laws have been enacted in the past three years. The general concept as put forth by proponents is that an LWO guarantees that employees who provide a service to local government using tax dollars will be paid a minimum wage which meets the local cost of living.

Most LWOs require contractors who provide services to a city or county government (typically such things as security and janitorial) to pay a minimum wage which is above the applicable state or federal minimum wage.

Most LWOs set some minimum threshold for the contract to come under the requirement (\$5,000 and \$25,000 most often), and some exempt non-profit organizations or small employers. Some LWOs go further, however, requiring compliance from all contractors (not just some service providers) and also include recipients of city financial aid, such as grants and tax abatements. Those jurisdictions which include financial aid recipients in their scope all set \$100,000 received as the minimum threshold, except for Philadelphia, which uses \$50,000.

Most jurisdictions with LWOs set an actual amount for the minimum wage, generally about \$7.50 an hour for 1998, while other jurisdictions benchmark their wage rate to the federal poverty level. In addition to the minimum wage, some cities and counties have added health care requirements, time-off provisions, COLA adjustments, and hiring requirements to the basic wage rate mandate. Opinion is very split on LWOs. LWO advocates include unions and low income groups, and they assert that service contractors, in the absence of a requirement, will not pay their workers a wage adequate to cover living expenses. LWO opponents, often business associations, argue that another mandated requirement will discourage job creation and lead to higher costs. LWOs, sometimes explicitly, have a limiting effect on contracting out by requiring contractors to pay a wage higher than the state or federal minimum wage -- this may result in less cost

saving to the jurisdiction. LWO proponents believe this to be beneficial, as the jobs preserved are at higher wage levels, provide benefits and may include union protection.

A LWO is not an increase in the minimum wage for all employers in a city. LWOs apply only to businesses holding city or county contracts. Also refer to Task Force Recommendation III-5-B regarding Minimum Wage.

2. Current Law/Practice

San Francisco has no Living Wage at present. Construction contracts contain "prevailing wage" requirements (usually the union wage for that trade). With the exception of parking lot attendants, there are no prevailing wage requirements for service contracts, and in-home health care workers are the only contract employees paid a set wage.

3. The Task Force's Approach

Part of the Task Force's mandate was to "[A]id the Board of Supervisors and the Mayor in reviewing various proposals, legislation and studies of the impact and benefit of a 'living wage,' [and the] Board shall refer any "living wage" proposals, studies and relevant reports to the Task Force for consideration and input before voting on any legislation creating a "living wage[.]"

To date, the Task Force has reviewed three pieces of legislation covered by the above language. The first and most significant is legislation introduced by Board President Ammiano on May 3, 1999 (file 99-0252). This legislation and the accompanying City Attorney's Digest is included in the Appendices. This legislation was modeled on Chapter 12B of the Administrative Code (i.e., "Domestic Partners") and sets out broad coverage which includes all City service contracts over \$25,000 (and if the contractor has more than 5 employees) and all City tenants if said tenant employs workers for more than 10 hours per week on the City land portion of their operation. This aspect is relatively uncommon for LWOs: only Los Angeles has a large number of tenants covered, while a few other ordinances (Oakland, Minneapolis, St. Paul) cover a handful of tenants through the "City Financial Aid Recipient" process. San Francisco is also unique in that it is a City and a County, and the only consolidated government to consider Living Wage.

Service contractors doing business for the City but located outside the City are also covered if they have eligible employees working more than 10 hours per week on City business. Estimates of the number of impacted contractor employees vary from 20,000 to 40,000. The legislation also requires paid and unpaid time off and mandates health care coverage or contribution which is loosely based on the Kaiser Permanente Community Rate. The legislation specifies an hourly wage of \$11, plus the aforementioned healthcare contribution.

The Task Force has analyzed Board President Ammiano's legislation in minute detail, essentially separating out the various provisions included in the legislation issue-by-issue

and making recommendations on each one separately. For example, the issue of wage rate is dealt with in Task Force Recommendations III-3-A, B & C.

In addition to File 99-0252, the Task Force briefly studied legislation introduced by Supervisor Katz to provide bid preferences in exchange for providing certain employee benefits, and legislation by Supervisor Leno which requires notification of contractor employees of their rights and benefits pursuant to the Federal Earned Income Tax Credit. Mr. Leno's legislation has passed and been signed by the Mayor and is supplemented by Task Force Recommendation III-5-A. Supervisor Katz's legislation is pending in the Board's Finance Committee. The Task Force also considered a proposal by Mr. Smits which would provide bid preferences for employers willing to pay a certain wage.

In addition to analyzing Board President Ammiano's legislation, The Task Force has considered:

- Other ordinances adopted elsewhere in California and the country.
- How many people might be covered by an LWO
- How much the Ordinance might cost, to:
 - * For-profit contractors
 - * Non-profit contractors
 - * Taxpayers
 - * The City jobs base
- How the ordinance could be best administered and enforced.

Having done this in some 40 meetings, the Task Force came to general agreement on some basic principles and approaches. First, the Task Force is unanimous in its support for some form of Living Wage Ordinance. Second, the Task Force believes a simpler ordinance is best at least initially, as experience will guide future policy makers in ways to expand and/or improve Living Wage provisions based on independent evaluation. Third, the Task Force was unanimous in its support for mandatory health care provisions. In the spirit of this cautious initial approach, most members of the Task Force support a phase-in of higher wage levels and mandatory evaluation and sunset provisions to insure that the City is not burdened with an unworkable mandate.

Members of the Task Force struggled with wage level in particular. In the end, members generally agreed that neither \$7.50 nor \$11 was really a "living" wage in San Francisco, and thus the recommended wage level can be seen as a sort of targeted minimum wage. The chair and several other members also felt strongly that their recommendation is part of "Living Wage I," as they put it, anticipating that if the Living Wage Ordinance works well, it may be expanded in both coverage and wage level. Members also noted that while the recommended level is less than some proposals, the healthcare provisions go much further than in other Living Wage Ordinances.

Lastly, the Task Force felt it is important to note that with as many as 40,000 workers potentially covered by Living Wage, the impact here will be far greater than in any other Living Wage city and, by some estimates, will cover more workers in San Francisco than in all other Living Wage cities combined. It is also important to note that a very significant portion of increased costs attributable to Living Wage arise from covering non-profit organizations. While quite a few Living Wage Ordinances cover non-profits (often by not specifically exempting them), almost all of these jurisdictions have very few non-profit contractors, whereas San Francisco has upwards of 800.

4. Recommendations in Brief

While the remainder of this report outlines the policy debate and recommendations in detail, the Task Force's recommendations can be summarized as follows:

- == Wage rate of \$7.50 the first year, \$8.25 the second, and \$9 the third.
(Plus mandatory health contribution, see next item)
- == City contractors must provide health insurance coverage to all covered employees, or pay an additional \$1.25 per hour into a City-supervised health purchasing pool, which will provide coverage.
- == For non-profit organizations with more than \$100,000 in City contract revenue, The Controller will annually certify if the appropriations ordinance (the Budget) contains sufficient funds to cover any cost increases the organizations will experience solely due to Living Wage. If the Controller does not certify that such funds are available, non-profit organizations will be exempt for that year.
- == Parity between salary percentage increases granted to City unionized workers and funding increases for non-profit contractors.
- == Non-profit organizations with less than \$100,000 in City contract revenue are exempt.
- == For-Profit organizations with less than \$150,000 in City contract revenue are exempt.
- == Tenants on Port property are exempt.
- == Airport tenants, contractors and concessionaires are covered by Living Wage except those who provide food and beverage and other retail concessions.
- == Mere encroachment on City-owned land does not trigger coverage.
- == Living Wage Ordinance must contain mandatory evaluation and 5-year sunset clause.

II. METHODOLOGY

1. Department and Public Testimony

Some 52 department representatives, business and non-profit leaders, researchers and general members of the public addressed the Task Force prior to its December 9, 1999 Public Hearing. At the Public Hearing, an additional seven people made comments on the Task Force's progress to date.

Departments appearing before the Task Force included Human Services, the Port, the Airport, Recreation & Parks, Public Health, Administrative Services, the Budget Analyst, the Legislative Analyst, the City Attorney, the Public Utilities Commission, the Assessor, the Tax Collector and Real Estate. Association, worker and business representatives included the Golden Gate Restaurant Association, the Living Wage Coalition, Local 2 of the Hotel and Restaurant Employees Union, the Pier Tenants Association, the Committee on Jobs, Fisherman's Wharf Association, Host International and the Chamber of Commerce. Researchers who spoke before the Task Force were Michael Potepan, Brian Murphy and Hadley Roff of San Francisco State University, Erica Schoenberger of Johns Hopkins University and Michael Reich of University of California at Berkeley. Representatives of Supervisor Ammiano's office and Supervisors Kaufman, Leno and Teng also addressed the group.

The Task Force has been meeting since March, 1999, more than 40 meetings to date. The Commission has studied a wide range of documents including ordinances passed in other cities, impact studies, news stories and advocacy materials from both supporters and opponents. The Task Force has received nearly 100 letters from various interested parties.

2. Research Studies

The Task Force has reviewed the following studies on the impact of Living Wage in other communities or on segments of San Francisco:

- 1) Los Angeles, by Richard Sander
- 2) Baltimore, by Erica Schoenberger
- 3) San Jose, Internal
- 4) DPH Study on Health Care Impacts, Internal

At the request of the Task Force, the Director of Administrative Services commissioned San Francisco State University to specifically evaluate the economic impacts on City contractors, their employees, and the City government itself. This lengthy study was discussed and presented in some three Task Force meetings. Subsequent to the initial release, San Francisco State issued an addendum updating some of the figures. Much of the substantial delay in the Task Force's reporting schedule is due to the time needed by

San Francisco State University to conduct a thorough impact analysis. The Task Force continued to meet while the study was being conducted.

The Task Force also reviewed another major study specific to the San Francisco ordinance conducted by Michael Reich of UC Berkeley on his own volition. Dr. Reich's study was issued in July, with an addendum covering property contracts issued in October. Both the UC Berkeley and the San Francisco State studies have been previously distributed. The Legislative Analyst's Office is issuing a companion report to this report analyzing the differences and significant points of both studies. While the SFSU study analyzed Board President Ammiano's legislation specifically, Reich's study examined Living Wage issues in a broader context.

The editors have also supplied the Task Force with some 10 memoranda and brief analyses on impacts in other cities, answers to specific issue questions, and similar comparisons. Most of these are available at the Legislative Analyst website in the archive section (www.ci.sf.ca.us/bdsuprvrs).

The City Attorney's Office, represented by Task Force Counsel Mario Kashou and Deputy City Attorney Bart Duncan, have researched several dozen legal issues for the Task Force. These issues have included ERISA and other labor law provisions, minimum wage law, city contracting procedures and regulations, Chapter 12 of the Administrative Code (domestic partners and MBE/WBE), powers and procedures of the Task Force, and charter provisions concerning the budget among many others.

3. Recommendations versus No Recommendation

The Task Force was originally comprised of 15 members. Board President Ammiano's representative, Dan Martin; and the at-large members representing labor, Walter Johnson; and low-income workers, Robert O'Malley; resigned in June, 1999.

Despite their resignations, the City Attorney advised the Task Force that the number required for the Task Force to take action and to have a quorum continued to be eight members. Thus, for the purpose of making recommendations, eight votes were still required. In those instances where less than eight members voted in the affirmative, no recommendation resulted, even though a majority (seven members of the remaining group) may have supported the measure. An attempt was made in August to add Richard L. Martin, Jr., of Goodwill Industries to the Task Force as an at-large, low-wage-worker representative. While the Rules Committee recommended Mr. Martin, the full Board of Supervisors rejected the appointment.

Herein you will find recommendations from the Task Force on more than 20 different Living Wage-related issues.

III ISSUE RECOMMENDATIONS

III-1 COVERAGE AND EXEMPTIONS

- A) Non-Profit Coverage
- B) Controller's Certification
- C) Coverage of Banks and Brokerages
- D) Exclusion of the Port
- E) Airport
- F) Excluding Encroachments
- G) Paid Time Off
- H) Recreation & Park Leases
- I) Exclusion of Some Low Income Housing

III-2 THRESHOLDS

- A) Non-Profit Thresholds
- B) For-Profit Thresholds
- C) Part-Time Employee Provisions

III-3 WAGE LEVELS

- A) Wage Level
- B) Parity Between City Employees and Non-Profit Workers
- C) Tip Credit Inclusion

III-4 HEALTH CARE AND OTHER BENEFITS

III-5 ALTERNATIVES AND INCENTIVES

- A) Earned Income Tax Credit
- B) Minimum Wage Study
- C) Trainee Program/Wage

III-6 ADMINISTRATION AND ENFORCEMENT

III-7 EVALUATION AND SUNSET CLAUSE

ISSUE III-1-A

INCLUSION OF NON-PROFIT ORGANIZATIONS

Recommendation:

The Task Force recommends that non-profit organizations be subject to Living Wage. [11-1-0-0]

Description:

Not all cities with Living Wage include non-profit contractors in their coverage. Of the 35 or so jurisdictions that have adopted Living Wage, about half specifically exempt non-profits, while several others explicitly include these organizations. Most of the jurisdictions that have included non-profits have relatively few contractors. Los Angeles County, which like San Francisco has many non-profit service contractors, specifically exempted non-profits. Los Angeles City also exempted non-profits except when the highest paid employee was paid more than 7 times the lowest paid worker.

Members Voting in Favor:

Welch, Cahill, Wilkinson, Fisher, King, Illig, Breslin, Mueller, Johnson, Rodriguez, White.

Members Voting Against:

Woo.

Arguments in Favor:

Members felt that non-profits should be covered as an issue of equity, but only if the ordinance made a clear policy statement that imposition of Living Wage on non-profits would not result in cuts in services to low income persons. In this same vein, members felt it important to emphasize that if non-profits were covered, the City would have to increase funding to non-profits to cover their increased costs. This idea is developed more fully in the next recommendation dealing with "Controller Certification."

The reason to include non-profits is not only to boost non-profit employee salaries, but to also insure that contracting-out of City services does not occur solely to save costs by paying contractor employees a sub-Living Wage.

Arguments Opposed:

Mr. Woo argued that non-profits are fundamentally different than for-profits, and their inclusion should come only after the City has some experience with applying Living Wage to for-profit contractors.

ISSUE III-1-B

CONTROLLER CERTIFICATION FOR NON-PROFITS

Recommendation: The Task Force recommends that any Living Wage Ordinance contain provisions for Controller certification, and to exempt non-profit contractors for the year if no certification is made. [10-2-0-0]

Description: San Francisco would experience much greater impacts than other jurisdictions in the non-profit sector if Living Wage is applied, as San Francisco has many times the number of non-profit service providers, mostly in the health and human services areas.

To do this, the Controller would annually certify if the City Appropriations Ordinance (the Budget) contained sufficient funds to reimburse non-profit contractors for increased costs solely due to meeting Living Wage requirements. If the Controller did not so certify, all non-profit contractors would be exempt for that year. The assumption behind this recommendation is that calculations will be based on the total value of all contracts held by an organization, and include City funds as well as federal and state “pass-through” funds.

Members Voting in Favor:

Welch, Cahill, Fisher, King, Illig, Breslin, Johnson, Rodriguez, Woo, White.

Members Voting Against:

Wilkinson, Mueller.

Arguments in Favor:

Proponents argued that subjecting non-profits to Living Wage without “pass-through” funds to reimburse them for higher costs would inevitably lead to service cuts. To avoid this, certification was chosen as a method of either guaranteeing adequate funds or providing an exemption in lean times. Members also argued that while for-profit firms often bid on variable price contracts where increased wage costs can be factored into the bid, non-profits usually bid for a fixed amount of funds and would be less able to absorb increased salary costs.

Arguments Opposed:

Opponents argued that certification was a false notion, and that if the Controller certified that funds were not available, non-profits would not be able to ratchet back wages and would instead simply not contract with the City. Further, the opponents argued that even if the non-profit were to choose to lower wages, this would be unfair to the non-profit’s employees, who would have to suffer pay cuts because the City chose not to fund the pass-through.

ISSUE III-1-C

INCLUSION OF BANKS AND BROKERAGE FIRMS

Recommendation: The Task Force recommends that all contracts of \$150,000 or more involving financial services be covered by the Living Wage Ordinance for the portion of their workforce working on City contracts and located within the City and County of San Francisco. [10-1-0-1]

Description: Most LWOs in the Country do not cover banks and brokerages. Members of the task force have presented evidence of the possible need to include these institutions under Living Wage. For example, recent media coverage of wage levels of financial institution employees were cited.

Members Voting in Favor: Welch, Cahill, Fisher, Illig, Breslin, Mueller, Johnson, Rodriguez, Woo, White.

Members Voting Against: Wilkinson.

Members Absent: King.

Arguments in Favor: Most members felt that financial services could easily absorb the costs of implementing the living wage ordinance. Many members stated that banks and brokerage houses particularly needed coverage under the LWO because of some of their employee practices, such as employing permanent part-time workers and sometimes paying relatively low wages.

Arguments Opposed: Mr. Wilkinson argued that including banks and brokerages would be difficult administratively and potentially risk the City's other obligation to manage its money effectively.

ISSUE III-1-D

EXEMPTION OF PORT TENANTS

Recommendation: The Task Force recommends that Living Wage not cover Port tenants. [9-1-0-2]

Description: As no other living wage ordinance has consistently covered all real estate leases, the issue of the Port tenants has been hotly debated in the task force meetings. Port tenants, often competing with nearby non-port tenants, argue that coverage under LWO puts them at an economic disadvantage. Covering Port tenants under Living Wage would mean that both front and back-house restaurant employees (i.e., both waiters and cooks), retail salespeople, and other such staff would received the mandated Living Wage.

Members Voting in Favor: Cahill, Wilkinson, Fisher, King, Illig, Breslin, Mueller, Rodriguez, Woo.

Members Voting Against: Welch.

Members Absent: Johnson, White.

Arguments in Favor: The major argument was the fundamental difference between businesses that receive a check from the City to perform a service and the Port property tenants that write the City a check for the lease of their property. It was also argued that while the public is not forced to spend its money at the Port, service contractors must receive their money from City tax dollars. Some members felt that covering Port tenants would create unfair competition between Port and non-port tenants because some Port tenants would have to raise prices and/or layoff employees to comply. Members from the public also argued that Port tenants are responsible for much of the capital infrastructure, upkeep, and maintenance costs and thus derive little "benefit" from their tenancy on City land, while the City enjoys the benefits the improvements.

Arguments Opposed: Mr. Welch stated that there was nothing in the studies procured by the Task Force that would support exempting the Port. He reminded members of the possibility of Cruise lines coming into San Francisco piers and as such the Port is a developing area that shouldn't be exempted completely.

ISSUE III-1-E

COVERAGE OF AIRPORT TENANTS AND CONCESSIONAIRES

Recommendation: The Task Force recommends that the Living Wage Ordinance cover all Airport service contractors, permittees and tenants (i.e., Airlines, Security Firms, Rental Car Agencies, etc.) with the exception of retail tenants and concessionaires (e.g., Food & beverage, news stands, gift shops, bookstores, etc., *ONLY*) and their sub-tenants and sub-concessionaires that pay market rent and a percentage of their revenues to the City. [8-3-0-1]

Description: Currently, the only Living Wage ordinance that includes a significant property lease element is the Los Angeles ordinance which includes coverage of the Los Angeles International Airport. In Los Angeles, some 68% of all contracts covered by Living Wage are at the airport, which was a focal point of the campaign to adopt the ordinance there. Advocates of Living Wage feel strongly that the airport should be included, as there are a significant number of poorly-paid workers employed by a variety of airport tenants, retailers and other concessionaires.

Unlike Port tenants, the relationship between the City and airport businesses is not always so simply defined as a lease. Some businesses who operate there are not tenants per se, but do operate a retail business (e.g., the moveable food item sales carts). Thus, the Task Force has used the concept of "concessionaires" in addition to tenants to include these various contractors. Similarly, "permittees" are those businesses that are not necessarily service contractors or tenants that none the less derive economic benefit from airport use, such as rental car agencies.

Members Voting in Favor:

Cahill, Illig, Breslin, Mueller, Rodriguez, Johnson, White, Woo.

Members Voting Against:

Welch, Wilkinson, Fisher.

Members Absent:

King.

Arguments in Favor: Proponents of airport inclusion argued that airport businesses, unlike Port tenants, have a "captive" market and thus a greater ability to pass along their increased wage costs to consumers. Members also noted that in accessing this captive market, businesses at the airport were clearly deriving an economic benefit from the City.

In terms of exempting retail establishments, members argued that the tenants at the airport must fund their own build outs, maintenance and repair, yet they cannot take their site improvements with them when they leave. Tenants at the airport are also subject to the decisions of the airport and airlines to alter gate and other locations that can result in a declining customer base. Some members argued that travelers have a choice not to purchase items at the airport and that compliance with the living wage ordinance may lead to higher prices and declining sales.

*Arguments
Opposed:*

Opponents were in two groups. One group felt that as tenants, and not service contractors, the airport should be entirely exempt. The other group felt that all of the airport should be covered, including retail businesses.

ISSUE III-1-F

ENCROACHMENTS

Recommendation: The Task Force recommends that mere encroachment on City-owned land should not trigger coverage. [12-0-0-0]

Description: No other Living Wage Ordinance considers mere encroachment on City-owned land a trigger for coverage. The ordinance introduced by Board President Ammiano includes language which could be interpreted as triggering coverage for encroachments.

Members Voting in Favor: Welch, Cahill, Wilkinson, Fisher, King, Illig, Breslin, Mueller, Johnson, Rodriguez, Woo, White.

Arguments in Favor: Members argued that encroachment alone should not be trigger the Living Wage Ordinance. Examples were cited of different City tenants, and how the a minor encroachment could result in large cost increases. Members noted that a slight encroachment doesn't usually confer a significant benefit on the business. The City's Department of Real Estate also made arguments in favor of this recommendation.

ISSUE III-1-G

PAID TIME OFF PROVISIONS

Recommendation: The Task Force recommends that any Living Wage Ordinance encourage employers to provide paid time off to their covered employees, with part-time workers receiving a pro-rata benefit, and subject to the employer time-off policies. [8-2-1-1]

Description: Some Living Wage Ordinances include required paid days off and some also include mandatory unpaid days as well. Notably, the Los Angeles and Oakland ordinances require 12 paid days and 10 unpaid days per year. These ordinances do not distinguish between vacation and sick leave, leaving the actual implementation to the employer.

Members Voting in Favor: Wilkinson, King, Illig, Breslin, Mueller, Johnson, Rodriguez, Woo.

Members Voting Against: Welch, Cahill.

Members Abstaining: Fisher.

Members Absent: White.

Arguments in Favor: Supporters divided into two groups. One group felt it was appropriate to set a “floor” and specify a number of days, but compromised and supported the recommendation. Most of the supporters, however, felt it was inappropriate for the City to specify how many paid days, or to require them at all, as it would usurp business’s rights and conflict with benefits offered to other employees.

Arguments Opposed: Opponents felt that it was appropriate for the LWO to set some minimum threshold of days. One opponent noted that there is a nexus between contractor employees and City employees and, as such, contractor employees should receive at least an amount comparable to what City employees receive in this category. The Employee Handbook for the City mandates 12 paid sick days and 10 paid vacation days per year.

ISSUE III-1-H

RECREATION & PARK LEASES

Recommendation: The task force voted on two recommendations and neither obtained either consensus, a majority of the Task Force, or a majority of those present. [NO RECOMMENDATION]

Description: Although the vast majority of property leases are effected through either the Port or the Airport, the Recreation & Parks Department does lease out numerous properties, such as Candlestick Park, five golf courses, the Marina Yacht Club, the SF Zoo, the Haight-Ashbury Youth Program, and the Beach Chalet restaurant, among others.

A variety of motions were made, and failed, to exempt all and some Recreation and Park tenants. Breslin first made a motion to exempt all Recreation and Park tenants, which failed at a meeting in November. Breslin came back with another motion in December that exempt all Recreation and Park tenants that are open to the public for non-recreational purposes and pay market rent. This motion also failed.

Arguments in Favor:

Some of the task force members wanted the small concessionaires and non-profit organizations exempt from Living Wage, but wanted to capture the ball parks and large corporations under this section of the ordinance. Others felt that the tenants that keep up maintenance of their property, do all upgrades, pay a market rate rental, and pay a percentage of their profits to the City should be exempt. Members considered using the same kind of guidelines they recommended for the Airport, but also expressed concern that the situation with Rec. and Park was different. The question of how to define recreational became problematic. One member suggested exempting non-profits, but then the Yacht Club is a non-profit and many members felt they should be covered.

Arguments Against:

Some members stated that the individuals who rent from Recreation and Park have the capacity to absorb the costs of paying Living Wage. A few members disagreed with exempting Rec and Park properties such as the Beach Chalet from paying Living Wage, particularly because the taxpayers have paid for the renovation of the building. One member argued that the Beach Chalet has no competition in the immediate area, and thus benefits greatly from leasing this space from Recreation and Park.

ISSUE III-1-I

EXCLUSION OF SOME LOW INCOME HOUSING

Recommendation: The Task Force recommends that any Living Wage Ordinance specifically exempt any employees paid all or in part by funds derived from the use of property owned or jointly owned by the City and County which was purchased with federal, state and/or local funds, where such property requires below-market rent and/or the provision of services to lower income residents as a condition of the funding. [11-0-0-1]

Description: The City has long pursued a policy of encouraging affordable housing development by leveraging state, federal and local dollars with some requirement that rents stay affordable or needed services are provided. It was unclear to the City Attorney whether or not the legislation by Board President Ammiano would apply to employees of these developments.

Members Voting in Favor: Welch, Cahill, Wilkinson, Fisher, King, Illig, Breslin, Mueller, Rodriguez, Woo, White.

Members Absent: Johnson.

Arguments in Favor: Basically, the maker of the motion argued that including employees of these kinds of developments would result in financial unfeasibility for many buildings, and contribute to San Francisco's affordable housing crisis. These developments, usually under federal and/or state restrictions on rental rates, would not be able to pass along these higher costs.

ISSUE III-2-A

NON-PROFIT THRESHOLDS

Recommendation:

The Task Force made two recommendations in this area:

1. The Task Force recommends that non-profit contractors with less than \$100,000 in annual City contract revenue be exempt.
2. The Task Force recommends that non-profit contractors who receive less than 50% of their total operating revenue or hold less than \$2 million in cumulative annual contracts with the City may apply for a waiver from compliance with Living Wage. The waiver shall be granted if the contractor can demonstrate that compliance would result in the reduction of critical health and human services. Waiver applications must be submitted no less than 90 days in advance of Controller's Certification (See page 16).
[8-3-0-1]

Description:

Most other Living Wage Ordinances that include non-profits contain some threshold for non-profit coverage – i.e., contracts below the threshold are exempt. Sometimes the thresholds for non-profit contractors and for-profit contractors are the same, but there is no consistent pattern. The assumption behind this recommendation is that the threshold will be calculated on the basis of the total value of all contracts held by an organization, and include City funds as well as federal and state “pass-through” funds.

Members Voting in Favor:

Welch, Cahill, Fisher, King, Illig, Breslin, Rodriguez, Johnson.

Members Voting Against:

Wilkinson, Mueller, Woo.

Members Absent:

White.

Arguments in Favor:

Basically, the maker of the motion argued that smaller non-profit organizations would have a difficult time with compliance. Larger non-profits, so the reasoning goes, have alternative funding sources, greater opportunities for economies of scale and, generally, a higher wage structure already in place. \$100,000 was chosen to insure that most of the larger non-profit contractors with the City would be covered and because this figure

is consistent with thresholds selected in some other Living Wage cities.

Arguments

Against:

Some members have consistently maintained that if the City adopts a Living Wage Ordinance, it should include everyone with no waivers or exemptions. This view was shared by several members, who viewed any threshold as introducing an equity concern. The opponents feel that an employee working a small contract shouldn't suffer in comparison to another employee, perhaps doing the exact same work, but employed on a larger contract.

Mr. Woo felt that the threshold should be higher, perhaps \$250,000, to make the coverage consistent with the Sunshine Initiative.

ISSUE III-2-B

FOR-PROFIT THRESHOLDS

Recommendation: The Task Force recommends that any Living Wage Ordinance will apply to for-profit service contractors only if said contractor has contracts totaling more than \$150,000 per year. [8-2-1-1]

Description: Like non-profit thresholds, most other Living Wage cities have some provision for thresholds on for-profit coverage. Typically, these thresholds are equal to or lower than the non-profit threshold, although in some cities there is no threshold at all (i.e., all contractors are covered). As with non-profits, the assumption here is that the threshold calculation is based on the total value of all contracts with a particular contractor.

Members Voting in Favor: Welch, Cahill, Fisher, Illig, Rodriguez, Johnson, Woo, White.

Members Voting Against: Wilkinson, Mueller.

Members Abstaining: Breslin.

Members Absent: King.

Arguments in Favor: The line of reasoning is similar here. Those in favor of this recommendation contend that smaller organizations have fewer resources and opportunities to make up the wage difference. Advocates were also concerned that a low or non-existent threshold would conflict with the City's policy to encourage small minority-owned, women-owned and locally-owned businesses. This concern, in part, explains the higher for-profit threshold. One member noted that contracts under this threshold are insignificant in the context of the overall City budget, and agencies might experience significantly higher costs because few potential bidders would want to wade through the compliance issues for a small contract.

Arguments Against: As with the issue of non-profit thresholds, opponents maintained that if the City should adopt a Living Wage Ordinance, it should include everyone with no waivers or exemptions.

ISSUE III-2-C

PART-TIME EMPLOYEE THRESHOLD

Recommendation: The Task Force considered and a majority voted for a recommendation that only workers who work more than 50% on a City contract be covered. The motion failed, however, as fewer than eight members supported it.
[NO RECOMMENDATION]

Description: Many Living Wage cities have grappled with the issue of how to cover part-time workers. The general concept behind Living Wage, according to some, is that workers performing City work under a contract should, like their city-employee brethren, be paid an adequate amount to live. The assumption is that workers who choose to work only part-time do not “need” the money as much as those working full-time to support themselves and perhaps a family. This is usually exemplified in student employees.

For this reason, some other cities have adopted specific rules about using part-time workers on city contracts. Los Angeles, for example, simply requires its contractors to use full-time workers only. Conversely, few other jurisdictions have adopted an hourly threshold because of fears that it would lead to labor substitution – e.g., a contractor would replace one full-time worker subject to the Living Wage with two exempt part-timers.

Members Voting in Favor:

Wilkinson, King, Illig, Breslin, Mueller, Johnson, Rodriguez.

Members Voting Against:

Welch, Cahill, Fisher, Woo.

Members Absent:

White.

Arguments in Favor:

As has been the case in other communities, concern was expressed that including every hour worked by an employee, even as little as one hour, would lead to inequities and serious administrative headaches for both the City and the contractors. Proponents argued the Living Wage should only apply to those working more hours.

Arguments Against:

Those opposed cited the risk of labor substitution as their primary reason for voting against this measure. Some members maintain that what we are debating is really a “Minimum Wage Ordinance,” since it is unrealistic to think a family can live on one breadwinner’s \$11 hourly wage, and as such should be applied as broadly as possible.

ISSUE III-3-A

WAGE LEVEL

Recommendation: The Task Force recommends that the wage level be \$7.50 for the first year, \$8.25 for the second year and \$9 for the third year. Note that another Recommendation, III-4, requires an additional \$1.25 for health benefits unless the contractor provides health benefits, so the resulting total wage is 7.50/8.75; 8.25/9.50; 9/10.25. [9-3-0-0]

Description: One of the most difficult decisions the Task Force had to make concerned wage level. The many living wage ordinances across the country are not consistent in terms of wage level, due to the different economic situations of the counties where those ordinances are implemented. The majority of LWOs set a dollar-amount wage level, sometimes phased in over a number of years. Several other communities benchmark the Living Wage to the Federal Poverty Level for a family of three or four. San Jose, for example, set its wage based on the Federal Poverty Level adjusted for the higher Bay Area cost of living. Oakland's Living Wage is approximately \$8.50/9.75, and San Jose's is \$9.50/10.75.

***Members Voting
in Favor:***

Wilkinson, King, Illig, Breslin, Mueller, Johnson, Rodriguez, Woo, White.

***Members Voting
Against:***

Welch, Cahill, Fisher.

***Arguments
in Favor:***

Many members felt this wage level, with the inclusion of required health coverage, was a good starting point to implement the ordinance. Some members argued that a lower wage level would give the City more ability to expand the coverage of the ordinance. Proponents also argued that given the much larger number of persons potentially covered by Living Wage, a lower wage was necessary to insure broad coverage and fiscal responsibility.

The SFSU Study indicated that a wage of \$9 would result in increased costs to non-profit service contractors of \$4.4 million; \$4.5 million to for-profit contractors; increased costs of \$13.8 million to Airport tenants and \$7.6 million for other leaseholders, with some 13,000 employees in all four of these categories receiving some additional benefit. Given the breadth of potential impact, the proponents felt a lower wage was justified to insure the City could afford the increase.

Proponents also noted that given the greater impact of Living wage in San Francisco, the Task Force had to balance the issues of breadth and level. By setting a wage level lower than the proposed \$11, members felt that more workers would be covered, thus making for a better trial period, after which the wage level could be increased further or the coverage broadened even more.

Arguments

Against:

Originally the Chair introduced a motion that would have set the wage level at \$9 an hour for the life of the legislation. That motion was withdrawn but instead led to a discussion that highlighted the fact that everyone wanted the wage level to be phased in over a three-year period. Others argued for a increase on wage level to be determined by the Consumer Price Index with a maximum 4% yearly increase, but that motion failed.

ISSUE III-3-B

**PARITY BETWEEN NON-PROFIT CONTRACTORS AND
CITY EMPLOYEE BARGAINING UNITS**

Recommendation: The Task Force recommends that the ordinance include language requiring parity in salary percentage increase decisions between non-profit agencies and public employee bargaining units. [9-3-0-0]

Description: The problem of parity between non-profit organization employees and City employees has not been addressed extensively by other Living Wage Ordinances. Some members believe that non-profit contractors should receive funding increases consistent with those received by City employee unions.

Members Voting in Favor: Welch, Cahill, Fisher, King, Illig, Breslin, Johnson, Rodriguez, White.

Members Voting Against: Wilkinson, Mueller, Woo.

Arguments in Favor: Some members believe that if non-profits had been receiving funding increases consistent with City employee wage increases, there would be no need to cover non-profit workers in Living Wage. Proponents also believe that if non-profit contractor employees are doing work that could in fact be done by City employees, then those contractor employees should receive salary increases similar to those of City unionized employees. Members also noted that non-profits in particular might suffer from "wage push" (meaning employees in equal classes NOT working on City contracts being paid less, and requesting equal pay) and thus benefit from parity to maintain their organizations' overall financial health.

Arguments Against: Some Task Force members believe that non-profits should not be covered under the Living Wage Ordinance at all, while other opponents believe the parity recommendation did not go far enough. Mr. Mueller believes that there should be funding for non-profit contractors before any wage increases are granted to City employees and that funding for contracts be a line item in the annual budget.

ISSUE III-3-C

TIP CREDIT INCLUSION

Recommendation: The Task Force recommends that should property contractors with tipped employees be covered under Living Wage, a tip credit should be applied to all documented and reported tips to employees in IRS-recognized tipped employee positions (direct and indirect). [11-1-0-0]

Description: A tip credit means the tips that are declared for tax purposes by the employee are added to the minimum wage (i.e., \$5.75 at the moment) to arrive at that person's "total compensation." Only then would the determination be made as to whether that employee needed additional salary to meet the Living Wage minimum.

For example, an employee who received, during the recording period, an average of \$3.00 per hour in tips, would not receive the Living Wage if the LW is set at \$7.50 –

NO ADDITIONAL: ($\$5.75 + \$3.00 = \$8.75, > \$7.50$).

Conversely, an employee with only \$1.00 in average tips per hour would receive a 75 cent raise --

SOME ADDITIONAL: ($\$5.75 + 1.00 + .75 = \$7.50$).

***Members Voting
in Favor:***

Cahill, Wilkinson, Fisher, King, Illig, Breslin, Mueller,
Johnson, Rodriguez, Woo, White.

***Members Voting
Against:***

Welch.

***Arguments
in Favor:***

Members of the public from the Pier Tenant Association and other Port tenant restaurant owners, testified in favor of a tip credit. These citizens offered proof of accountability for tracking employee tips and spoke about the high daily tip amount many of their workers receive. Members of the Task Force argued that applying a tip credit to the Living Wage would target higher wages to the lowest wage-earners in restaurants.

***Arguments
Against:***

Mr. Welch believes this is an issue that should be settled by collective bargaining and not City ordinance.

ISSUE III-4

HEALTH BENEFITS

Recommendation: The Task Force made two recommendations in this area:

1. The Task Force recommends that a health insurance requirement be part of any Living Wage Ordinance, and
 2. The Task Force recommends that organizations covered by Living Wage must either provide health insurance benefits to all employees working on City contracts or pay \$1.25 per employee contract hour to a City-regulated healthcare purchasing pool, which may be augmented by City, employer, employee or other funds.
- [12-0-0-0]

Description:

About half of all other Living Wage Ordinances contain some health-care requirement, including most of the large cities. In the other Living Wage cities, this has been effected through requiring employers to either provide health insurance or pay the employee an extra \$1 to \$1.50 per hour. Federal labor law prohibits local governments from requiring that contractor employees be insured should those employees prefer to not avail themselves of coverage.

This has led to a major criticism of health benefit provisions in other Living Wage communities – it is frequently the case that contractors find it easier to simply pay the additional hourly amount to the employee than to provide insurance. This is almost always the case with part-time workers, who have a more difficult time obtaining health insurance anyway. Since the decision is also up to the employee in most of these other cities, it is usually the case that the employee chooses the extra money. While this certainly helps boost family income, it still leaves these vulnerable workers without health coverage.

To deal with this issue, the Legislative Analyst recommended that Living Wage legislation in San Francisco specify fixed benefit levels rather than dollar amounts. This recommendation was incorporated in Board President Ammiano's legislation, where the Kaiser Permanente community rate is the benefit basis, and offers an incentive for employers to provide insurance (rather than the extra \$1 or so) by making the insurance benefit on a pre-tax basis.

The Task Force grappled with this issue over the course of many meetings. In the end, all members believed that health benefits should be required and that simply paying the additional \$1 or so

would not achieve this. At the same time, members explored different ways to reach this goal, one of which is recommended.

***Members Voting
in Favor:***

Welch, Cahill, Wilkinson, Fisher, King, Illig, Breslin,
Mueller, Johnson, Rodriguez, Woo, White

***Arguments in
Favor:***

Without exception, all Task Force members recognized the need for health insurance provisions. A significant number of members, however, felt strongly that merely adding an additional \$1 or so to the wage rate would not result in many contract workers receiving new health benefits. This sentiment led to the pool concept.

The San Francisco Health Plan, which provides health care for IHSS workers, among other quasi-City employees and wholly private entities, indicated that there are sufficient City contractor employees to make a pool concept work. Administratively, the Task Force took no position on whether this pool would be managed by the City itself or an outside entity, specifying only that the purchasing pool be regulated and overseen by the City.

The pool concept seems to be the easiest way to insure broad health coverage and stay within Federal mandates. Each contract employee would either receive health insurance from their employer, or said employer would pay \$1.25 per hour worked on the City contract into the healthcare pool, which would use the pooled funds to buy coverage. Contractor employees would then receive health coverage from the pool.

The employee could still decline the coverage (as is his legal right, and perhaps because his spouse has coverage, for example), but the refusing employee would not get the additional \$1.25 – the pool would receive it and use this to help pay for everyone else's coverage. This provides a very strong incentive for employees to choose coverage. Such a plan also increases the viability of the San Francisco Health Plan and would move the City a bit closer to its goal of universal health coverage.

***Arguments
Against:***

While Ms. King supports the notion of a pool, she is totally opposed to the idea that if the employee declines coverage, the employer must still pay the \$1.25 per hour into the pool. Ms. King feels this penalizes the employer and adds no benefit to the employee.

ISSUE III-5-A

EARNED INCOME TAX CREDIT

Recommendation: The Task Force recommends that the City budget at least \$1 million for information and outreach campaign to increase participation of eligible workers in the EITC program, with special effort made to inform Living Wage workers. [12-0-0-0]

Description: The Federal Earned Income Tax Credit helps low-wage workers augment their income by providing an enhanced income tax refund. Supervisor Leno has already sponsored legislation which requires City contractors to notify their eligible employees of this benefit.

Members Voting in Favor: Welch, Cahill, Wilkinson, Fisher, King, Illig, Breslin, Mueller, Johnson, Rodriguez, Woo, White.

Arguments in Favor: Members felt, based on their own experience, that too few people take advantage of EITC. While Supervisor Leno's legislation mandates the "stick," members also wanted to provide the "carrot" in the form of greater outreach.

ISSUE III-5-B

MINIMUM WAGE STUDY

Recommendation: The Task Force recommends that the City conduct or commission a study on the feasibility and impacts of a City-wide or Bay Area-wide minimum wage. [10-1-0-1]

Description: A municipally-adopted minimum wage is not pre-empted by state or federal law. The City of Houston held a referendum on raising that city's minimum wage above that of the Texas and US levels. A similar effort was initiated in Denver (neither succeeded). One of the issues related to Living Wage is whether or not a City-wide minimum wage would be a fairer approach, as it would apply to all low wage workers, not just those working for City contractors.

Members Voting in Favor: Welch, Cahill, Wilkinson, Fisher, King, Illig, Mueller, Johnson, Rodriguez, Woo.

Members Voting Against: Breslin.

Members Absent: White.

Arguments in Favor: Several members felt that since the proposed Living Wage is at best difficult for a family to live on, the proposal really is more of a minimum wage targeted at City contractor employees. These members felt that by raising the minimum wage City-wide, fewer inequities would be created and all businesses and non-profits would be on a "level playing field." Since this was not a direct mandate to the Task Force, members felt it was appropriate to recommend studying this possibility in greater depth as an alternative or supplement to a Living Wage Ordinance.

Arguments Against: Miss Breslin feels that a City-wide minimum wage would be very detrimental to San Francisco businesses, creating a strong incentive for them to locate elsewhere. She also felt that studying this issue was not part of the Task Force's mandate and so should be silent on the issue.

ISSUE III-5-C

PROVISIONS FOR A TRAINEE WAGE/PROGRAM

Recommendation: The Task Force recommends that any ordinance exempt workers in bona-fide on-the-job training for entry-level-jobs, including interns, summer-school student workers and after-school student workers. Such exemption may exist for up to 12 months, and may be extended, subject to approval by the administering agency, when the employers shows good reason based on the nature of the training and/or the special needs of the trainees. [11-0-0-1]

Description: Provisions for trainee programs are not typically included in LWOs. Some LWOs have suggested that training programs are the best way to decrease the numbers of low wage worker. A few existing LWOs offer incentives to organizations that have training programs or offer an exemption for those contractor employees enrolled in training programs.

Members Voting in Favor: Welch, Cahill, Wilkinson, Fisher, King, Illig, Breslin, Mueller, Johnson, Rodriguez, Woo.

Members Absent: White.

Arguments in Favor: Members all agreed that merely upping the hourly wage of low-income workers would not provide those workers with the skills to become better-paid workers. Without an exemption for those employees in such training programs, members felt there would be little incentive for businesses and non-profits to expend time and resources in training low-skill workers and would lead to substitution of low-skill workers with higher-skill workers.

ISSUE III-6

ADMINISTRATION AND ENFORCEMENT

Recommendation: The Task Force recommends that the Living Wage Ordinance contain the following specific provisions for its administration and enforcement:

1. The administrative mechanism for monitoring and compliance should be simple and efficient.
2. The Board of Supervisors should designate, in the ordinance, a specific administering agency.
3. The administering agency should be staffed at a level that allows pro-active, complaint-driven enforcement which includes, but is not limited to:
 - a) Requiring contractors to file an annual declaration of compliance.
 - b) Requiring contractors to submit a list of covered positions.
 - c) Allows review of payroll records on-site.
 - d) Complaints shall be resolved at the lowest level possible, however, the administering agency shall be notified of all complaints and any proposed resolution of said complaints.
 - e) Periodic review of health care provisions.
 - f) Mandatory notification of covered workers of their rights under Living Wage.
 - g) The administering agency may investigate complaints whether on referral or on its own volition.
4. The ordinance include progressive sanctions for non-compliance including, but not limited to:
 - a) 10 days for the contractor to remedy the violation with no sanction.
 - b) If non-compliance persists, the City may do any or all of the following:

- 1) Assess a monetary penalty against the contractor.
- 2) Withhold contract payment.
- 3) Terminate the contract.
- 4) Bar the contractor from future bidding.

[12-0-0-0]

Description:

The administration and enforcement of Living Wage Ordinances has been implemented very differently across the country. Task Force members all feel strongly that administration and enforcement is critical to the success of Living Wage, and has not been sufficiently addressed in the pending legislation.

Members Voting in Favor:

Welch, Cahill, Wilkinson, Fisher, King, Illig, Breslin, Mueller, Johnson, Rodriguez, Woo, White.

Arguments in Favor:

All members feel that the current ordinance is too vague about enforcement and administration. Testimony was heard from several sources indicating that purely "complaint-driven" enforcement without adequate outreach and investigation was unsuccessful in several cities, notably Los Angeles. While not wanting to create a large bureaucracy, members indicated that the volume of contracts and the number of affected contractor employees justifies additional staff to insure compliance.

ISSUE III-7

ONGOING EVALUATION AND SUNSET CLAUSE

Recommendation: The Task Force recommends that any Living Wage Ordinance include a mandatory review and written report to the Board of Supervisors during the third year of the ordinance, after two years of operation; conducted by the administering agency and an advisory board and addressing the problem of part-time workers, health care, expansion of coverage and general operations; and further that the administering agency commission a study by an independent analyst to assess the economic impacts on workers and contractors and the delivery of health and human services. [10-0-1-1]

Description: Estimating the impact of Living Wage in San Francisco is difficult. In addition to providing both city and county services, we also operate an electrical utility, aqueducts, dams, a retail water distribution system, a municipal railway, the country's largest nursing home and many other unique services.

The SFSU impact study estimated as many as 42,000 workers would receive some additional benefit under Board President Ammiano's legislation. This contrasts with perhaps 500 in Oakland and San Jose. The Task Force was not able to find any other jurisdiction with similar numbers.

Further, the Task Force recommends that if no such review is conducted and received by the Board of Supervisors, The Living Wage Ordinance will sunset five years after its effective date.

***Members Voting
in Favor:***

Welch, Cahill, Wilkinson, Fisher, Illig, Breslin, Mueller, Johnson, Rodriguez, Woo.

***Members
Abstaining:***

King.

Members Absent:

White.

***Arguments in
Favor:***

All members of the Task Force agreed that ongoing evaluation and analysis was necessary, given the many unknowns of applying Living Wage in the San Francisco context. Special attention was made to the idea that any initial legislation may well be the baseline, and not the final word on the subject. Thus, significant evaluation and research is necessary to fine-tune the application of Living Wage, and also to justify any extensions or recissions.

IV. APPENDICES

1. List of Task Force Members and Occupation.
2. Living Wage Ordinance (file 99-0252).
3. City Attorney's Digest on the Living Wage Ordinance.
4. List of Testifiers before the Task Force.
5. Preface and Introduction of San Francisco State University Impact Study.
6. Background and Main Findings of UC Berkeley Benefit and Cost Study.

TASK FORCE MEMBERS

Jim Illig, Director of Governmental Relations, Project Open Hand. **CHAIR.**
Appointed by Supervisor Newsom.

Bruce Fisher, Executive Director, Huckleberry Youth Programs. **VICE-CHAIR.**
Appointed by Supervisor Katz.

Patricia Breslin, Executive Director, Golden Gate Restaurant Association.
Appointed by Supervisor Yaki.

Brian Cahill, Executive Director, Catholic Youth Organization (CYO)
Appointed by the Rules Committee (At-Large).

NaNoshka Johnson, Principal, NOSH Productions, Inc.
Appointed by the Rules Committee (At-Large).

Kim King, President, King Security Services, Inc.
Appointed by Supervisor Kaufman.

Rolf D. Mueller, President, RJM Systems, Inc.
Appointed by Supervisor Yee.

Lucia M. Rodriguez, Founder/CEO, DIA, Inc.
Appointed by Supervisor Becerril.

Calvin Welch, Program Director, San Francisco Information Clearinghouse
Appointed by Supervisor Bierman.

Earl H. White, President, Black Chamber of Commerce.
Appointed by Supervisor Brown.

William F. Wilkinson, President, Wilkinson GreenLeaf, Inc.
Appointed by Supervisor Leno.

Kent Woo, Executive Director, NICOS Chinese Health Coalition.
Appointed by Supervisor Teng.

[Living Wage Ordinance]

AMENDING THE SAN FRANCISCO ADMINISTRATIVE CODE BY ADDING CHAPTER 12N TO PROVIDE THAT A PRESCRIBED MINIMUM LEVEL OF COMPENSATION (A "LIVING WAGE") BE PAID TO CERTAIN EMPLOYEES OF CONTRACTORS PROVIDING SERVICES TO THE CITY AND COUNTY AND TO CERTAIN EMPLOYEES OF PARTIES WHO ENTER INTO CONTRACTS FOR THE EXCLUSIVE USE OF PROPERTY OWNED BY THE CITY AND COUNTY; AND AMENDING CHAPTER 20 OF THE SAN FRANCISCO ADMINISTRATIVE CODE BY ADDING SECTION 20.58.6 TO PROVIDE THAT THE NUMBER OF HOURS OF SERVICES REQUIRED OF GENERAL ASSISTANCE RECIPIENTS WHO ARE PERFORMING SERVICES IN ORDER TO MAINTAIN ELIGIBILITY SHALL BE CALCULATED USING THE LIVING WAGE.

Note: The entire Chapter 12N is new; the entire Section 20.58.6 is new.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Findings. The City and County of San Francisco (the "City") enters into many contracts with third parties to provide services to the public and to City government. In addition, the City enters into contracts with third parties for the exclusive use by such third parties of property owned by the City. Experience indicates that these contracts have frequently involved compensation to the third party's or its subcontractors' employees that is at or only slightly above the minimum wage levels required by federal and state laws. This low level of compensation tends to depress the quantity and quality of services provided by these third parties and their subcontractors by fostering high turnover, absenteeism, and lackluster performance. Conversely, higher levels of employee compensation tend to increase employees' job satisfaction, attendance, loyalty and productivity, and thereby improve the third parties' and their subcontractors' services. Requiring these third parties and their subcontractors to provide a minimum level of compensation to their employees will

SUPERVISOR AMMIANO
BOARD OF SUPERVISORS

1 therefore improve the services rendered to the public and to City government. Such
2 improvement of services on property owned or controlled by the City, such as the City's ports
3 of entry, will improve the level of care and maintenance of City-owned structures and of
4 improvements on such property and will enhance the image of and quality of life in the City for
5 its citizens as well as visitors.

6 The cost of living in the City is extremely high. The inadequate compensation paid by
7 some City contractors and their subcontractors fails to provide the their respective employees
8 with sufficient resources to afford life in the City. This inadequate compensation frequently
9 fosters conditions that cause such employees to move from the City and that place a burden
10 on the City's limited social services. The City therefore has an interest in promoting an
11 employment environment that protects these limited resources. In addition, the City has an
12 interest in improving the health and welfare of the public and the employees covered by this
13 Ordinance. Jobs paying an adequate wage will increase consumer income, decrease poverty
14 and invigorate neighborhood business.

15 The number of hours of services required to be performed by certain general
16 assistance recipients in order to maintain eligibility for such assistance is currently calculated
17 on the basis of the minimum wage. This calculation undervalues the services performed by
18 these recipients for the City and for community-based nonprofit organizations, and tends to
19 depress the quantity and quality of services provided by these recipients by fostering high
20 turnover, absenteeism, and lackluster performance. Calculating the required hours of
21 services using the Living Wage, rather than the minimum wage, will help ameliorate these
22 negative effects on the quantity and quality of services. In addition, the new method of
23 calculation will improve the health and welfare of these recipients by adequately valuing their
24 services and thereby removing the unfair burden of an hours requirement that is too high.

Section 2. Amendment to Chapter 12 of the Administrative Code. The San Francisco Administrative Code is hereby amended by adding Chapter 12N to read as follows:

CHAPTER 12N

LIVING WAGE

Sec. 12N.1	Title
Sec. 12N.2	Definitions
Sec. 12N.3	Required Contract Provisions
Sec. 12N.4	Living Wage Components
Sec. 12N.5	Agency Designation and Authority
Sec. 12N.6	Waivers by the Agency
Sec. 12N.7	Additional Waivers by the Agency—Nonprofit Corporations
Sec. 12N.8	Special Waiver by the Public Utilities Commission
Sec. 12N.9	Preemption
Sec. 12N.10	Effective Date
Sec. 12N.11	Severability

SEC. 12N.1. TITLE. This Chapter shall be known as the "San Francisco Living Wage Ordinance."

SEC. 12N.2. DEFINITIONS. As used in this Chapter the following capitalized terms shall have the following meanings:

"Agency" shall mean the City department, office or commission designated by the Board of Supervisors, from time to time, to bear responsibility for administering this Chapter. The Clerk of the Board of Supervisors shall maintain a record of such designations.

"City" shall mean the City and County of San Francisco.

"Contract" shall mean a Services Contract or a Property Contract.

"Contract Amendment" shall mean an agreement entered into on or after the Effective Date, pursuant to which a Contract entered into prior to the Effective Date is modified or supplemented in order to: (i) extend the term; (ii) increase the total amount of payments due

1 from the City under a Services Contract; (iii) increase the scope of services to be performed
2 by a Services Contractor; (iv) expand the premises covered under a Property Contract; or
3 (v) increase the total amount of payments due to the City from a Property Contractor.

4 "Contracting Department" shall mean the department, commission or other City entity
5 which enters into the applicable Contract on behalf of the City.

6 "Contractor" shall mean a Services Contractor or a Property Contractor.

7 "Covered Employee" shall mean:

8 (a) An employee of a Services Contractor (including, without limitation, an In-Home
9 Supportive Services worker) who during the applicable Pay Period performs any work related
10 to the applicable Services Contract: (i) within the geographic boundaries of the City; (ii) on real
11 property owned or controlled by the City, but outside the geographic boundaries of the City; or
12 (iii) elsewhere in the United States, but only if such related work performed elsewhere within
13 the United States consists of more than ten (10) hours per each work week during the Pay
14 Period in question; or

15 (b) An employee of a Property Contractor who in each work week during any Pay
16 Period performs more than ten (10) hours of work on the property covered by the applicable
17 Property Contract.

18 Notwithstanding the foregoing, the term "Covered Employee" shall exclude the following
19 employees of a Contractor that is a Nonprofit Corporation:

20 (i) Any employee who is: (A) under the age of twenty-one (21); (B) employed
21 as an after-school or summer employee; and (C) not employed so as to replace,
22 displace or lower the wage or benefits of any existing position or employee.

23 (ii) Any employee who is: (A) employed as a trainee in a bona fide training
24 program, which training program enables the employee to advance into a permanent
25 position paying not less than the Living Wage; (B) employed for a cumulative period not

1 longer than ninety (90) days in any calendar year; and (C) not employed so as to
2 replace, displace or lower the wage or benefits of any existing position or employee.

3 (iii) Any disabled employee of a Contractor, which disabled employee: (A) is
4 covered by a current sub-minimum wage certificate issued by the U.S. Department of
5 Labor to the Contractor; or (B) would be covered by such a certificate but for the fact
6 that the Contractor is paying a wage equal to or higher than the minimum wage.

7 "Effective Date" shall mean the applicable effective date specified in Section 12N.10 of
8 this Chapter.

9 "Excluded Subcontract" shall mean any agreement or portion of an agreement
10 between a Contractor and a third party made pursuant to a Contract that is not an Included
11 Subcontract, including, without limitation, an agreement pursuant to which a Contractor
12 obtains from a third party goods to be used in the fulfillment of the Contractor's duties under
13 the applicable Contract.

14 "Group Rate" shall mean the base group rate for membership, in effect immediately
15 prior to the Effective Date, of the health maintenance organization that has the largest number
16 of members in the State of California and that offers both individual and group medical plans.
17 Such health maintenance organization shall determine the plan design for the plan to which
18 the Group Rate applies using a hypothetical group whose size shall be the median size of all
19 groups that have group plans with such health maintenance organization and whose median
20 age shall be the median age of all groups that have group plans with such health maintenance
21 organization. Notwithstanding the foregoing, if the plan design of the plan to which the Group
22 Rate applies is not equivalent to the plan design of the plan to which the Individual Rate
23 applies, the design of the group plan shall be made equivalent to the design of the individual
24 plan by adjusting the benefit level of each feature of the group plan to the level of the
25 individual plan; the Group Rate and the Individual Rate shall then be calculated on the basis

1 of such equivalent plan designs.

2 "Included Subcontract" shall mean an agreement or portion of an agreement pursuant
3 to which: (i) a Contractor obtains from a third party services or labor to be used in the
4 fulfillment of the Contractor's duties under the applicable Contract; or (ii) a Property Contractor
5 transfers to a third party the right to occupy or use all or any portion of the real property
6 covered by the applicable Property Contract.

7 "Individual Rate" shall mean the individual rate (without any medical examination
8 condition for membership or pre-existing condition exclusion) in effect immediately prior to the
9 Effective Date, of the health maintenance association that has the largest number of members
10 in the State of California and that offers both individual and group plans. If such health
11 maintenance organization offers more than one individual membership, the Individual Rate
12 shall be based on the individual membership contract that is most favorable to the member.

13 "Living Wage" shall mean each of the components required under Section 12N.4. of
14 this Chapter.

15 "Nonprofit Corporation" shall mean a nonprofit corporation, duly organized, validly
16 existing and in good standing under the laws of the jurisdiction of its incorporation and (if a
17 foreign corporation) in good standing under the laws of the State of California, which
18 corporation has established and maintains valid nonprofit status under Section 501(c)(3) of
19 the United States Internal Revenue Code of 1986, as amended, and all rules and regulations
20 promulgated under such Section.

21 "Pay Period" shall mean the applicable Contractor's regular pay period.

22 "Property Contract" shall mean a written agreement (including, without limitation, any
23 Included Subcontract, lease, concession, franchise or easement agreement) for the exclusive
24 use of real property that is owned by the City or of which the City has exclusive use, with a
25 term exceeding twenty-nine (29) days in any calendar year, whether by single or cumulative

1 instruments. If cumulative instruments cause the term of such an to exceed twenty-nine (29)
2 days, the agreement in question shall be deemed a Property Contract only on and after the
3 effective date of the instrument which causes the term to exceed twenty-nine (29) days.
4 Notwithstanding the foregoing, the term "Property Contract" shall exclude: (i) Excluded
5 Subcontracts; (ii) agreements with a Property Contractor that has five (5) or fewer employees;
6 (iii) revocable at-will use or encroachment permits for the use of or encroachment on City
7 property regardless of the ultimate duration of such permit, unless such permits are granted to
8 a private entity for the use of City property for the purpose of a for-profit activity;
9 (iv) agreements entered into prior to the Effective Date, unless and until a Contract
10 Amendment occurs; (v) agreements entered into after the Effective Date pursuant to, and
11 within the scope of, bid packages or requests for proposals advertised and made available to
12 the public prior to the Effective Date, which bid packages or requests for proposals were not
13 amended on or after the Effective Date, unless and until a Contract Amendment occurs;
14 (vi) street excavation, street construction or street use permits; (vii) agreements for the use of
15 a City right-of-way where a contracting utility has the power of eminent domain;
16 (viii) agreements with a Property Contractor that is a public entity whose jurisdictional
17 boundaries are not coterminous with those of the City; (ix) agreements governing the use of
18 City Property primarily for recreational activities (but not for the operation of a business that
19 provides recreational or entertainment activities); and (x) agreements that require the
20 Contractor to pay no less than the "prevailing rate of wage" in accordance with Section A7.204
21 of Appendix A to the City's Charter and Chapter 6 of the San Francisco Administrative Code,
22 but only to the extent each Covered Employee is covered by such requirement. For the
23 purposes of this definition, "exclusive use" means the right to use or occupy real property to
24 the exclusion of others, subject to the rights reserved by the party granting such exclusive
25 use.

1 "Property Contractor" shall mean either: (i) the person or entity that enters into a
2 Property Contract with the City; or (ii) in the case of an Included Subcontract that is a Property
3 Contract, the subcontractor who enters into the Included Subcontract with the Contractor.

4 "Services Contract" shall mean an agreement or portion of an agreement that provides
5 for services to be purchased at the expense of the City or out of trust moneys under the
6 control of the City. The term "Services Contract" shall include, without limitation, Included
7 Subcontracts and agreements such as grant agreements, pursuant to which grant
8 agreements the City grants funds to a Contractor for services (including, without limitation,
9 cultural activities, performances or exhibitions) to be rendered to all or any portion of the
10 public rather than to City government. Notwithstanding the foregoing, the term "Services
11 Contract" shall exclude: (i) Excluded Subcontracts; (ii) agreements with a Services Contractor
12 that has five (5) or fewer employees; (iii) agreements for the purchase or lease of goods or for
13 guarantees, warranties, shipping, delivery or initial installation of such goods; (iv) agreements
14 for public works or improvements; (v) agreements entered into pursuant to settlement of legal
15 proceedings; (vi) agreements for urgent litigation expenses; (vii) agreements involving
16 specialized litigation requirements where the City Attorney's Office finds that it would be in the
17 best interests of the City not to include the requirements of this Chapter; (viii) agreements with
18 any person or entity in which the cumulative amount of compensation payable to such person
19 or entity is less than twenty-five thousand dollars (\$25,000) in any fiscal year, provided that
20 the agreement in question shall be deemed a Services Contract on and after the effective
21 date of any instrument which causes such cumulative compensation to exceed twenty-five
22 thousand dollars (\$25,000); (ix) agreements for the investment of trust moneys or agreements
23 relating to the management of trust assets; (x) agreements entered into prior to the Effective
24 Date (unless and until a Contract Amendment is entered into); (xi) agreements entered into
25 after the Effective Date (unless and until a Contract Amendment is entered into) pursuant to,

1 and within the scope of, bid packages or requests for proposals advertised and made
2 available to the public prior to the Effective Date, which bid packages or requests for
3 proposals were not amended on or after the Effective Date; (xii) agreements involving the
4 expenditure by the City of public grant funds, to the extent the application of this Chapter will
5 violate or be inconsistent with the terms or conditions of the applicable grant agreement, or
6 with the rules, regulations or instructions of the public agency administering such grant
7 agreement, which terms or conditions or rules, regulations or instructions provide for
8 compensation that differs from the Living Wage; (xiii) agreements with a Services Contractor
9 that is a public entity whose jurisdictional boundaries are not coterminous with those of the
10 City; (xiv) agreements for employee benefits to be provided to City employees, where the
11 Director of Human Resources finds that no entity is willing to comply with this Chapter and is
12 capable of providing the required employee benefits; (xv) agreements that require the
13 Contractor to pay no less than the "prevailing rate of wage" in accordance with Section A7.204
14 of Appendix A to the City's Charter and Chapter 6 of the San Francisco Administrative Code,
15 but only to the extent each Covered Employee is covered by such requirement; and
16 (xvi) agreements for the investment of City moneys where the Treasurer finds that: (A) no
17 person, entity or financial institution doing business in the City is willing to comply with this
18 Chapter and is capable of performing the desired transactions; or (B) requiring compliance
19 with this Chapter will violate the Treasurer's fiduciary obligations because the overall benefit
20 to the City or the public as a result of such compliance is outweighed by the financial
21 detriment to the City or the public as a result of such compliance.

22 "Services Contractor" shall mean either: (i) the person or entity that enters into a
23 Services Contract with the City; or (ii) in the case of an Included Subcontract that is a Services
24 Contract, the subcontractor who enters into the Included Subcontract with the Contractor.

1 **SEC. 12N.3. REQUIRED CONTRACT PROVISIONS.** Every Contract or Contract

2 Amendment entered into on or after the Effective Date shall provide as follows:

3 (a) For each Pay Period during the term of the Contract (as such term may be
4 extended from time to time), Contractor shall provide to each Covered Employee no less than
5 the Living Wage as required in this Chapter.

6 (b) Failure to comply with the foregoing requirement shall constitute a material
7 breach by Contractor of the terms of the Contract. Such failure may be determined by the
8 Contracting Department or by the Agency.

9 (c) If within ten (10) days after the Contractor receives written notice of such a
10 breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured
11 within such period of ten days, Contractor fails to commence efforts to cure within such period
12 of ten days, or thereafter fails to diligently pursue such cure to completion, the City may
13 pursue any rights or remedies available under the terms of the Contract or under applicable
14 law.

15 (d) In addition to any other rights or remedies available to the City under the terms
16 of the Contract or under applicable law, the City shall have the following rights, in the event of
17 such failure by the Contractor: (i) the right to charge the Contractor an amount equal to the
18 difference between the Living Wage and any compensation, medical plan costs and time off
19 actually provided to each Covered Employee who was not paid in accordance with the terms
20 of this Chapter, together with interest on such amount from the date payment was due at the
21 maximum rate then permitted by law; (ii) the right to set off all or any portion of the amount
22 described in the preceding clause (i) of this subsection against amounts due to Contractor
23 under the Contract; and (iii) the right to terminate the Contract in whole or in part. Each of
24 these rights shall be exercisable individually or in combination with any other rights or
25 remedies available to the City. Any amounts realized by the City pursuant to this subsection

1 shall be paid to each applicable Covered Employee.

2 (e) The Contractor shall keep itself informed of the current Living Wage, and shall
3 provide prompt written notice to all Covered Employees of annual adjustments to the Living
4 Wage, as well as any written communications received by the Contractor from the City, which
5 communications are marked to indicate that they are to be distributed to Covered Employees.

6 (f) The Contractor shall provide reports to the City in accordance with any reporting
7 standards promulgated by the Agency.

8 (g) The Contractor shall not discharge, reduce in compensation, or otherwise
9 discriminate against any employee for complaining to the City with regard to the employer's
10 compliance or anticipated compliance with this Chapter, for opposing any practice proscribed
11 by this Chapter, for participating in proceedings related to this Chapter, for seeking to assert
12 or enforce any rights under this Chapter by any lawful means.

13 (h) The Contractor represents and warrants that it is not an entity that was set up, or
14 is being used, for the purpose of evading the intent of this Chapter.

15
16 **SEC. 12N.4. LIVING WAGE COMPONENTS.** The Living Wage shall consist of each
17 of the following:

18 (a) Hourly gross compensation in the amount of eleven dollars (\$11.00) per hour.
19 Such hourly gross compensation amount shall be adjusted annually by the Controller. Each
20 adjustment shall take effect on July 1. Such adjustment shall be equal to the percentage
21 increase in the Consumer Price Index for All Urban Consumers (CPI-U), all items index, for
22 the San Francisco-Oakland-San Jose region (as published by the Bureau of Labor Statistics,
23 U.S. Department of Labor), measured from the Consumer Price Index most recently published
24 prior to the Effective Date (in the case of the first such adjustment) or the previous April 1 (in
25 the case of subsequent adjustments) to the Consumer Price Index most recently published

1 prior to the April 1 immediately preceding the July 1 in question. If there is no such increase,
2 or if there is a decrease, then such hourly gross compensation amount shall remain
3 unchanged. The Controller shall publish by June 1 of each year in a central location, and
4 shall maintain in such location on an ongoing basis, the adjusted hourly gross compensation
5 amount. If the federal government revises or ceases to publish the Consumer Price Index,
6 the Controller shall convert to the revised index or to the successor index in accordance with
7 the guidelines therefor issued by the federal government.

8 (b) Either of the following: (i) paid membership under a group membership contract
9 with a pre-tax cost per member that is no less than the Group Rate; or (ii) cash in an amount
10 that, after taxes, is not less than the Individual Rate. The Group Rate and the Individual Rate
11 shall be adjusted annually by the Controller. Each adjustment shall take effect on July 1.
12 Such adjustment shall be equal to the increase in the Group Rate or the Individual Rate, as
13 the case may be, in effect on the Effective Date (in the case of the first such adjustment) or
14 the previous April 1 (in the case of subsequent adjustments) to the Group Rate or Individual
15 Rate, as the case may be, most recently in effect as of April 1 immediately preceding the
16 July 1 in question. If there is no such increase, or if there is a decrease, then the Group Rate
17 or the Individual Rate, as the case may be, shall remain unchanged. The Controller shall
18 obtain from the health maintenance organization specified in this Chapter and publish by June
19 1 of each year in a central location, and shall maintain in such location on an ongoing basis,
20 the applicable Group Rate and Individual Rate.

21 (c) Compensated time off (at the rates specified in subsections (a) and (b) of this
22 Section) in the amount of .231 days per work week, which time shall vest with the Covered
23 Employee at the end of the applicable Pay Period and which time may be used, at the option
24 of the Covered Employee, for sick leave, vacation or personal necessity. Notwithstanding the
25 foregoing, if a Contractor reasonably determines, in good faith, that the Contractor cannot

1 comply with this requirement for compensated time off, the Contractor shall provide the
2 Covered Employee with a cash equivalent of such compensated time off.

3 (d) Uncompensated time off in the amount of .192 days per work week, which time
4 shall vest with the Covered employee at the end of the applicable Pay Period and which time
5 may be used, at the option of the Covered Employee, for sick leave for the illness of the
6 Covered Employee or such employee's spouse, domestic partner, child, parent, sibling,
7 grandparent or grandchild, once the Covered Employee has exhausted all available
8 compensated time off.

9
10 **SEC. 12 N.5. AGENCY DESIGNATION AND AUTHORITY.** No later than the
11 Effective Date, the Board of Supervisors shall by resolution designate the Agency, which may
12 promulgate guidelines or rules for the administration of this Chapter. Upon any determination
13 that a Contractor has breached the terms of the Contractor's Contract required under this
14 Chapter, the Agency shall notify the Contracting Department of its findings and of any action
15 that the Agency believes is required under the applicable Contract. Upon the request of the
16 Contracting Department, the Agency shall also issue a determination as to whether a
17 particular instrument constitutes a Contract under this Chapter. The Agency shall report on
18 compliance with this Chapter to the Board of Supervisors no less frequently than annually.
19 Such report shall include cumulative information regarding the number of waivers granted by
20 the Agency pursuant to Section 12N.7 of this Chapter and statistical data regarding the facts
21 underlying such waivers.

22
23 **SEC. 12N.6. WAIVERS BY THE AGENCY.** The Agency shall waive the requirements
24 of this Chapter under the following circumstances:

25 (a) The Contracting Department has certified in writing to the Agency, and the

1 Agency has found that: (i) either (A) there is only one prospective Contractor willing to enter
2 into the applicable Property Contract on the terms and conditions established by the City
3 (other than the requirements of this Chapter); or (B) the needed services under the applicable
4 Services Contract are available only from a sole source; and (ii) the prospective Contractor is
5 not currently disqualified from doing business with the City or any other governmental agency.

6 (b) The Contracting Department has certified in writing to the Agency (prior to the
7 Controller's contract certification), and the Agency has found that: (i) pursuant to Chapters 6
8 and 21 of the Administrative Code, the Contract is necessary to respond to an emergency
9 which endangers the public health or safety; and (ii) no entity that complies with the
10 requirements of this Chapter and is capable of responding to the emergency is immediately
11 available to perform the required services.

12 (c) The Contracting Department has certified in writing to the Agency, and the
13 Agency has found that: (i) there are no qualified responsive bidders or prospective vendors
14 that comply with the requirements of this Chapter; and (ii) the Contract is for a service or a
15 project that is essential to the City or the public.

16 (d) The Contracting Department has certified in writing to the Agency, and the
17 Agency has found that: (i) the Services to be purchased are available under a bulk purchasing
18 arrangement with a federal, state or local governmental entity; (ii) purchase under such
19 arrangement will substantially reduce the City's cost of purchasing such Services; and
20 (iii) purchase under such an arrangement is in the best interest of the City or the public.
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25

1 **SEC. 12N.7. ADDITIONAL WAIVERS BY THE AGENCY—NONPROFIT**
2 **CORPORATIONS.** The Contracting Department may seek a waiver by the Agency of the
3 requirements of this Chapter with respect to a Nonprofit Corporation as follows:

4 (a) The Contracting Department shall provide to the Agency a written explanation,
5 prepared and signed by the Nonprofit Corporation, setting forth: (i) the economic hardship to
6 the Nonprofit Corporation or the negative impact on services that would result from
7 compliance with this Chapter; (ii) the wages and benefits currently paid to employees who
8 would be Covered Employees under this Chapter, the number of such employees and the
9 total amount for each Pay Period by which the Living Wage for such employees would exceed
10 such current wages and benefits; and (iii) the annual wages and benefits paid by the Nonprofit
11 Corporation to the five most highly paid individuals employed by the Nonprofit Corporation.

12 (b) The Contracting Department shall provide to the Agency a written explanation
13 for the Contracting Department's inability to alleviate the economic hardship or negative
14 impact described in the written explanation prepared by the Nonprofit Corporation.

15 (c) The Agency shall make a written determination, in its discretion, whether the
16 written explanations of the Nonprofit Corporation and the Contracting Department are
17 adequate to justify the waiver. If the Agency determines that the written explanations are
18 adequate to justify the waiver, the Agency shall grant the requested waiver.
19

20 **Sec. 12N.8. SPECIAL WAIVER BY THE PUBLIC UTILITIES COMMISSION.** The
21 General Manager of the Public Utilities Commission may waive the requirements of this
22 Chapter where the Contractor is providing to or on behalf of the San Francisco Public Utilities
23 Commission services relating to: (a) the provision, conveyance or transmission of wholesale
24 or bulk water, electricity or natural gas; or (b) ancillary requirements such as spinning reserve,
25 voltage control, or loading scheduling, as required for ensuring reliable services in accordance

1 with good utility practice; provided, however, that: (i) the purchase of such services may not
2 practically be accomplished through the City's standard competitive bidding procedures; and
3 (ii) the Contractor is not providing direct, retail services to end users within the geographic
4 boundaries of the City.

5
6 **SEC 12N.9. PREEMPTION.** Nothing in this Chapter shall be interpreted or applied so
7 as to create any power or duty in conflict with any federal or state law.

8
9 **SEC 12N.10. EFFECTIVE DATE.** This Chapter shall become effective
10 September 1, 1999. Notwithstanding the foregoing, this Chapter shall not become effective
11 with respect to Contractors that are Nonprofit Corporations and Covered Employees who are
12 In-Home Supportive Services workers until July 1, 2000. This Chapter is intended to have
13 prospective effect only.

14
15 **SEC 12N.11. SEVERABILITY.** If any part or provision of this Chapter, or the
16 application of this Chapter to any person or circumstance, is held invalid, the remainder of this
17 Chapter, including the application of such part or provisions to other persons or
18 circumstances, shall not be affected by such a holding and shall continue in full force and
19 effect. To this end, the provisions of this Chapter are severable.

20
21 Section 3. Amending Section 20 of the San Francisco Administrative Code. Chapter
22 20 of the San Francisco Administrative Code is hereby amended by adding Section 20.58.6 to
23 read as follows:
24
25

1 **SEC. 20.58.6. USE OF LIVING WAGE TO CALCULATE REQUIRED HOURS OF**

2 **SERVICE.** (a) To determine the number of hours of services required of recipients who are
3 performing services for the City or for a community-based nonprofit association in order to
4 maintain eligibility for General Assistance under this Chapter, the applicable Maximum
5 Monthly Assistance Grant under Section 20.57 of this Chapter shall be divided by the hourly
6 gross compensation amount described in Section 12N.4(a) of the Administrative Code.

7 (b) The formula set forth in subsection (a) of this Section shall not apply to services or
8 other activities that are either (i) considered training under the Fair Labor Standards Act, 29
9 U.S.C. §§ 201, et seq.; or (ii) not covered by the Fair Labor Standards Act. In addition, such
10 services and other activities shall not apply toward the number of hours of required service
11 calculated pursuant to such subsection (a).

12 (c) This Section shall become effective September 1, 1999. This Section is intended to
13 have prospective effect only.

14
15 APPROVED AS TO FORM:

16 LOUISE H. RENNE, City Attorney
17
18

19 By: _____
20 Bart Duncan
21 Deputy City Attorney
22
23
24
25

LEGISLATIVE DIGEST
May 3, 1999

FILE NO _____

LIVING WAGE ORDINANCE (SUPERVISOR AMMIANO)

AMENDING THE SAN FRANCISCO ADMINISTRATIVE CODE BY ADDING CHAPTER 12N TO PROVIDE THAT A PRESCRIBED MINIMUM LEVEL OF COMPENSATION (A "LIVING WAGE") BE PAID TO CERTAIN EMPLOYEES OF CONTRACTORS PROVIDING SERVICES TO THE CITY AND COUNTY AND TO CERTAIN EMPLOYEES OF PARTIES WHO ENTER INTO CONTRACTS FOR THE EXCLUSIVE USE OF PROPERTY OWNED BY THE CITY AND COUNTY; AND AMENDING CHAPTER 20 OF THE SAN FRANCISCO ADMINISTRATIVE CODE BY ADDING SECTION 20.58.6 TO PROVIDE THAT THE NUMBER OF HOURS OF SERVICES REQUIRED OF GENERAL ASSISTANCE RECIPIENTS WHO ARE PERFORMING SERVICES IN ORDER TO MAINTAIN ELIGIBILITY SHALL BE CALCULATED USING THE LIVING WAGE.

Both Chapter 12N and Section 20.58.6 contained in this Ordinance are new. The following is a summary of their principal terms:

CHAPTER 12N

1. **Application.** The Ordinance will require that provisions requiring certain compensation and time off (the "Living Wage") be included in certain types of City agreements. These terms will apply to certain employees of the contractors and subcontractors that enter into such agreements.

(a) **Agreements and Employees Covered.** Any agreement subject to the Ordinance must provide that the Living Wage will be paid to all Covered Employees (as described below) for each pay period during the term the agreement. The two types of agreements subject to the Ordinance are :

(i) *Services Contracts*—These are agreements for services purchased at the expense of the City or out of trust funds under the control of the City. Subcontracts under these agreements for services or for labor are included within the scope of Services Contracts; grant agreements are included as well. (Any contractor or subcontractor with these types of agreements is referred to in the Ordinance as a "Services Contractor.") The following exclusions apply:

- Subcontracts for goods.
- Agreements with a small business (five or fewer employees).
- Agreements for the purchase of goods rather than services.
- Agreements for the settlement of legal proceedings.
- Agreements for urgent litigation expenses.
- Agreements for specialized litigation requirements.
- Agreements involving less than \$25,000 in compensation during a fiscal year.
- Agreements for investment or management of trust moneys.
- Agreements entered into prior to the Effective Date.
- Agreements pursuant to bid packages or RFPs published prior to the Effective Date.
- Agreements using public grant funds, where the grant terms prohibit compliance.
- Agreements with a public entity whose jurisdictional boundaries are not coterminous with those of the City.
- Agreements for employee benefits provided to City employees where the Director of Human Resources finds that no entity is willing and able to comply.
- Agreements that require payment of the prevailing wage.
- Agreements for investment of City moneys where the Treasurer finds a breach of his or her fiduciary duty in the event of compliance.

(ii) *Property Contracts*—These are written agreements for the exclusive use of property owned or controlled by the City for a term exceeding 29 days. (Any contractor with this type of contract is referred to in the Ordinance as a “Property Contractor.”) The following exclusions apply:

- Subcontracts for goods.
- Agreements with a small business (five or fewer employees).
- Revocable, at-will use or encroachment permits, unless granted to a private entity for a for-profit activity.
- Agreements entered into prior to the Effective Date.

- Agreements pursuant to bid packages or RFPs published prior to the Effective Date.
- Street excavation, street construction or street use permits
- Agreements for use of a City right-of-way, where a contracting utility has power of eminent domain.
- Agreements with a public entity whose jurisdictional boundaries are not coterminous with those of the City.
- Agreements governing the use of City property primarily for recreational purposes.
- Agreements that require payment of the prevailing wage.

(iii) *Covered Employees*—These are the employees of a Services Contractor or Property Contractor to whom the Ordinance applies (including In-Home Supportive Services workers). Whether an employee is covered is determined at the end of each Contractor's regular pay period.

- An employee of a Services Contractor who, during the pay period, performs work related to the Services Contract within City boundaries or on property owned or controlled by the City.
- An employee of a Services Contractor who, during the pay period, performs work elsewhere in the U.S. for more than 10 hours per work week.
- An employee of a Property Contractor who, during the pay period, performs at least 10 hours of work per week on the property covered by the Property Contract.

The term "Covered Employee" excludes the following employees of a Nonprofit Corporation:

- An employee under the age of twenty-one (21), working as an after-school or summer employee, provided the employee is not employed so as to replace, displace or lower the wage or benefits of any existing position or employee.
- Any employee who is a bona fide trainee, with a chance for promotion to a permanent Living Wage-level position, who is employed no longer than ninety (90) days in any calendar year and is not employed so as to replace, displace or lower the wage or benefits of any existing position or employee.
- An disabled employee covered by a sub-minimum wage certificate issued by the U.S. Department of Labor, or who could

be covered by such a certificate if the employer were paying such employee less than the minimum wage.

(b) The Living Wage Requirements. The Living Wage includes the following components:

(i) Hourly gross compensation in the amount of \$11.00 per hour. The hourly gross compensation amount is adjusted annually according to the increase in the CPI.

(ii) Either of the following:

- Paid membership in a group medical plan, at a pre-tax cost that is no less than the base group rate of the HMO with the most members in California. This group rate increases annually based on the increase in such base group rate.
- Cash in an amount that, after taxes, is no less than the individual rate of the HMO referred to immediately above. This individual rate also increases annually based on the increase in such individual rate.

(iii) Compensated time off (at the rate specified above) equal to .231 days per work week (12 days annually) for sick leave, vacation or personal necessity. If a Contractor cannot comply with this requirement, the Contractor must provide a cash equivalent.

(iv) Uncompensated time off equal to .192 days per work week (10 days annually) for sick leave for the illness of the Covered Employee or such employee's spouse, domestic partner, child, parent, sibling, grandparent or grandchild, once the Covered Employee has exhausted all available compensated time off.

(c) Required Contract Terms. The Contract must include the following types of provisions:

(i) *Compliance*—All Covered Employees must be paid the Living Wage during each applicable pay period during the term of the Contract.

(ii) *Breach and Opportunity to Cure*—Any breach of these terms is a material breach permitting the City to exercise all remedies available under the Contract or by law. The contractor receives written notice of any breach and a 10-day cure period.

(iii) *Damages*—The City may collect damages on behalf of each Covered Employee equal to the difference between the Living Wage and the

compensation actually paid, together with interest at the maximum rate permitted by law. Amounts realized by the City are then paid to each Covered Employee.

(iv) *Notice*—The Contractor must keep informed of the current Living Wage and provide notice to Covered Employees of all adjustments and of any written communications provided by the City for disclosure to Covered Employees.

(v) *Reporting*—The Contractor must submit compliance reports as required by the city.

(vi) *No Retaliation*—The Contractor may not retaliate against employees who assert their rights under this Ordinance in a lawful manner.

(vii) *No Evasive Intent*—The Contractor must warrant that it is not set up or being used in order to evade the Ordinance.

(d) Effective Dates. The Ordinance will be effective on September 1, 1999, except that the effective date for Contractors that are Nonprofit Corporations and for Covered Employees who are In-Home Supportive Services workers will be July 1, 2000.

2. Administration. The Ordinance will be administered by an agency designated periodically by resolution of the Board of Supervisors. The following is an overview of this Agency's responsibilities:

(a) Rules, Enforcement and Reporting. The agency will issue guidelines and rules for administration. It will work with the Departments in order to enforce the Ordinance. It will also report at least annually to the Board of Supervisors.

(b) General Waivers. The agency will issue waivers where the Department has certified and the agency has found that:

(i) *Sole Source*—There is only one available Contractor, and that Contractor has not been disqualified by the City or any other government entity.

(ii) *Emergency*—The contract is necessary to respond to an emergency that endangers the public health or safety, and no entity complying with this Chapter is available to immediately provide the necessary services.

(iii) *Multiple Noncomplying Bidders*—There are no complying bidders or vendors and the services or project is essential to the City or the public.

(iv) *Bulk Purchases*—The services are available under a bulk purchasing arrangement with another government entity at a substantially reduced price, and purchase is in the best interest of the City or the public.

(c) Waiver for Nonprofit Corporations. The Agency will issue waivers to a Contractor that is a Nonprofit Corporation if:

(i) *Supporting Statement by Nonprofit Corporation*—The Agency has received a written explanation, prepared and signed by the Nonprofit Corporation setting forth: (A) the economic hardship to the Nonprofit Corporation or the negative impact on services that would result from compliance with this Chapter; (B) the wages and benefits currently paid to employees who would be Covered Employees under this Chapter and the total amount for each pay period by which the Living Wage for such employees would exceed such current wages and benefits; and (C) the annual wages and benefits paid by the Nonprofit Corporation to the five most highly paid individuals employed by the Nonprofit Corporation.

(ii) *Supporting Statement by Department*—The Agency has received a written explanation for the Department's inability to alleviate the economic hardship or negative impact described in the written explanation prepared by the Nonprofit Corporation.

(iii) *Agency Determination*—The Agency determines that the written explanations of the Nonprofit Corporation and the Contracting Department are adequate to justify the waiver.

3. Waiver by PUC. The General Manager of the PUC may issue a waiver where the Contractor is providing services relating to: (a) the provision, conveyance or transmission of wholesale or bulk water, electricity or natural gas; or (b) ancillary requirements such as spinning reserve, voltage control, or loading scheduling, as required for ensuring reliable services in accordance with good utility practice, provided, that: (i) the purchase of such services may not practically be accomplished through the City's standard competitive bidding procedures; and (ii) the Contractor is not providing direct, retail services to end users within the geographic boundaries of the City.

SECTION 20.58.6

1. Background. Existing provisions of Sections 20.55. et seq. of the Administrative Code, which deal with the City's General Assistance program, do not specify how one arrives at the number of hours of service required of General Assistance recipients who are performing services for the City or for a community-based nonprofit association in order to maintain eligibility. Current policy is that this number of hours is determined by dividing the applicable Maximum General Assistance Grant amount described in Section 20.57 of the Administrative Code by the minimum wage.

2. Effect of New Section. This new Section 20.58.6 specifies a new formula for determining such number of hours of services: the formula requires the use of the hourly gross compensation required as part of the Living Wage rather than the minimum wage. Welfare-to-work, training and other activities not covered by the

federal Fair Labor Standards Act are not subject to this formula, and are not applied to the number of required hours determined using the formula.

LEGISLATIVE DIGEST
May 3, 1999

FILE NO _____

LIVING WAGE ORDINANCE (SUPERVISOR AMMIANO)

AMENDING THE SAN FRANCISCO ADMINISTRATIVE CODE BY ADDING CHAPTER 12N TO PROVIDE THAT A PRESCRIBED MINIMUM LEVEL OF COMPENSATION (A "LIVING WAGE") BE PAID TO CERTAIN EMPLOYEES OF CONTRACTORS PROVIDING SERVICES TO THE CITY AND COUNTY AND TO CERTAIN EMPLOYEES OF PARTIES WHO ENTER INTO CONTRACTS FOR THE EXCLUSIVE USE OF PROPERTY OWNED BY THE CITY AND COUNTY; AND AMENDING CHAPTER 20 OF THE SAN FRANCISCO ADMINISTRATIVE CODE BY ADDING SECTION 20.58.6 TO PROVIDE THAT THE NUMBER OF HOURS OF SERVICES REQUIRED OF GENERAL ASSISTANCE RECIPIENTS WHO ARE PERFORMING SERVICES IN ORDER TO MAINTAIN ELIGIBILITY SHALL BE CALCULATED USING THE LIVING WAGE.

Both Chapter 12N and Section 20.58.6 contained in this Ordinance are new. The following is a summary of their principal terms:

CHAPTER 12N

1. Application. The Ordinance will require that provisions requiring certain compensation and time off (the "Living Wage") be included in certain types of City agreements. These terms will apply to certain employees of the contractors and subcontractors that enter into such agreements.

(a) Agreements and Employees Covered. Any agreement subject to the Ordinance must provide that the Living Wage will be paid to all Covered Employees (as described below) for each pay period during the term the agreement. The two types of agreements subject to the Ordinance are :

(i) *Services Contracts*—These are agreements for services purchased at the expense of the City or out of trust funds under the control of the City. Subcontracts under these agreements for services or for labor are included within the scope of Services Contracts; grant agreements are included as well. (Any contractor or subcontractor with these types of agreements is referred to in the Ordinance as a "Services Contractor.") The following exclusions apply:

- Subcontracts for goods.
- Agreements with a small business (five or fewer employees).
- Agreements for the purchase of goods rather than services.
- Agreements for the settlement of legal proceedings.
- Agreements for urgent litigation expenses.
- Agreements for specialized litigation requirements.
- Agreements involving less than \$25,000 in compensation during a fiscal year.
- Agreements for investment or management of trust moneys.
- Agreements entered into prior to the Effective Date.
- Agreements pursuant to bid packages or RFPs published prior to the Effective Date.
- Agreements using public grant funds, where the grant terms prohibit compliance.
- Agreements with a public entity whose jurisdictional boundaries are not coterminous with those of the City.
- Agreements for employee benefits provided to City employees where the Director of Human Resources finds that no entity is willing and able to comply.
- Agreements that require payment of the prevailing wage.
- Agreements for investment of City moneys where the Treasurer finds a breach of his or her fiduciary duty in the event of compliance.

(ii) *Property Contracts*—These are written agreements for the exclusive use of property owned or controlled by the City for a term exceeding 29 days. (Any contractor with this type of contract is referred to in the Ordinance as a "Property Contractor.") The following exclusions apply:

- Subcontracts for goods.
- Agreements with a small business (five or fewer employees).
- Revocable, at-will use or encroachment permits, unless granted to a private entity for a for-profit activity.
- Agreements entered into prior to the Effective Date.

- Agreements pursuant to bid packages or RFPs published prior to the Effective Date.
- Street excavation, street construction or street use permits
- Agreements for use of a City right-of-way, where a contracting utility has power of eminent domain.
- Agreements with a public entity whose jurisdictional boundaries are not coterminous with those of the City.
- Agreements governing the use of City property primarily for recreational purposes.
- Agreements that require payment of the prevailing wage.

(iii) *Covered Employees*—These are the employees of a Services Contractor or Property Contractor to whom the Ordinance applies (including In-Home Supportive Services workers). Whether an employee is covered is determined at the end of each Contractor's regular pay period.

- An employee of a Services Contractor who, during the pay period, performs work related to the Services Contract within City boundaries or on property owned or controlled by the City.
- An employee of a Services Contractor who, during the pay period, performs work elsewhere in the U.S. for more than 10 hours per work week.
- An employee of a Property Contractor who, during the pay period, performs at least 10 hours of work per week on the property covered by the Property Contract.

The term "Covered Employee" excludes the following employees of a Nonprofit Corporation:

- An employee under the age of twenty-one (21), working as an after-school or summer employee, provided the employee is not employed so as to replace, displace or lower the wage or benefits of any existing position or employee.
- Any employee who is a bona fide trainee, with a chance for promotion to a permanent Living Wage-level position, who is employed no longer than ninety (90) days in any calendar year and is not employed so as to replace, displace or lower the wage or benefits of any existing position or employee.
- An disabled employee covered by a sub-minimum wage certificate issued by the U.S. Department of Labor, or who could

be covered by such a certificate if the employer were paying such employee less than the minimum wage.

(b) The Living Wage Requirements. The Living Wage includes the following components:

(i) Hourly gross compensation in the amount of \$11.00 per hour. The hourly gross compensation amount is adjusted annually according to the increase in the CPI.

(ii) Either of the following:

- Paid membership in a group medical plan, at a pre-tax cost that is no less than the base group rate of the HMO with the most members in California. This group rate increases annually based on the increase in such base group rate.
- Cash in an amount that, after taxes, is no less than the individual rate of the HMO referred to immediately above. This individual rate also increases annually based on the increase in such individual rate.

(iii) Compensated time off (at the rate specified above) equal to .231 days per work week (12 days annually) for sick leave, vacation or personal necessity. If a Contractor cannot comply with this requirement, the Contractor must provide a cash equivalent.

(iv) Uncompensated time off equal to .192 days per work week (10 days annually) for sick leave for the illness of the Covered Employee or such employee's spouse, domestic partner, child, parent, sibling, grandparent or grandchild, once the Covered Employee has exhausted all available compensated time off.

(c) Required Contract Terms. The Contract must include the following types of provisions:

(i) *Compliance*—All Covered Employees must be paid the Living Wage during each applicable pay period during the term of the Contract.

(ii) *Breach and Opportunity to Cure*—Any breach of these terms is a material breach permitting the City to exercise all remedies available under the Contract or by law. The contractor receives written notice of any breach and a 10-day cure period.

(iii) *Damages*—The City may collect damages on behalf of each Covered Employee equal to the difference between the Living Wage and the

compensation actually paid, together with interest at the maximum rate permitted by law. Amounts realized by the City are then paid to each Covered Employee.

(iv) *Notice*—The Contractor must keep informed of the current Living Wage and provide notice to Covered Employees of all adjustments and of any written communications provided by the City for disclosure to Covered Employees.

(v) *Reporting*—The Contractor must submit compliance reports as required by the city.

(vi) *No Retaliation*—The Contractor may not retaliate against employees who assert their rights under this Ordinance in a lawful manner.

(vii) *No Evasive Intent*—The Contractor must warrant that it is not set up or being used in order to evade the Ordinance.

(d) Effective Dates. The Ordinance will be effective on September 1, 1999, except that the effective date for Contractors that are Nonprofit Corporations and for Covered Employees who are In-Home Supportive Services workers will be July 1, 2000.

2. Administration. The Ordinance will be administered by an agency designated periodically by resolution of the Board of Supervisors. The following is an overview of this Agency's responsibilities:

(a) Rules, Enforcement and Reporting. The agency will issue guidelines and rules for administration. It will work with the Departments in order to enforce the Ordinance. It will also report at least annually to the Board of Supervisors.

(b) General Waivers. The agency will issue waivers where the Department has certified and the agency has found that:

(i) *Sole Source*—There is only one available Contractor, and that Contractor has not been disqualified by the City or any other government entity.

(ii) *Emergency*—The contract is necessary to respond to an emergency that endangers the public health or safety, and no entity complying with this Chapter is available to immediately provide the necessary services.

(iii) *Multiple Noncomplying Bidders*—There are no complying bidders or vendors and the services or project is essential to the City or the public.

(iv) *Bulk Purchases*—The services are available under a bulk purchasing arrangement with another government entity at a substantially reduced price, and purchase is in the best interest of the City or the public.

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federal Fair Labor Standards Act are not subject to this formula, and are not applied to the number of required hours determined using the formula.

Living Wage Task Force Testimonies

Meeting Date	Speaker	Affiliation
11/29/99	none	
11/24/99	Creeden, Tom	Port tenants
11/18/99	Costello, Marian	Pier Tenant Association
11/18/99	Cobb, Jim	restaurant owner
11/18/99	Smith, Yvonne	airport restaurant owner
11/10/99	Lowland, Kathy	CEO San Francisco Maritime Museum
11/10/99	Hobbs, Helen	Tia Margarita, owner
11/4/99	Nikpay, Shahnaz	CEO San Francisco Health Plan (SFHP)
11/4/99	O'Malley, Robert	Living Wage Coalition
11/4/99	Harrington, Kathleen	Golden Gate Restaurant Association
10/28/99	Murphy, Dr. Brian	San Francisco State University economist
10/28/99	Potepan, Dr. Michael	San Francisco State University economist; Urban Institute, Director
10/21/99	Reich, Dr. Michael	UC Berkeley professor, author of alternate economic analysis of living wage study
10/21/99	Murphy, Dr. Brian	San Francisco State University economist
10/21/99	Lightbourne, Will	Human Services, Executive Director
10/21/99	McGine, Avery	Crossroads Café (at airport), owner
10/21/99	Harrington, Kathleen	Golden Gate Restaurant Association
10/21/99	Costello, Mary Ellen	SOMA
10/14/99	Murphy, Dr. Brian	San Francisco State University economist

Living Wage Task Force Testimonies

10/14/99	Potepan, Dr. Michael	San Francisco State University economist; Urban Institute, Director
10/14/99	Costello, Marianne	
10/14/99	Harrington, Kathleen	Golden Gate Restaurant Association
10/7/99	Murphy, Dr. Brian	San Francisco State University economist
10/7/99	Potepan, Dr. Michael	San Francisco State University economist; Urban Institute, Director
10/7/99	Jacobs, Ken	Living Wage Coalition
9/30/99	none	
9/23/99	O'Malley, Robert	Living Wage Coalition
9/16/99	Potepan, Dr. Michael	San Francisco State University economist; Urban Institute, Director
9/16/99	O'Malley, Robert	Living Wage Coalition
9/9/99	Jacobs, Ken	Living Wage Coalition
9/2/99	Toto, Ms.	Local 2, Secretary / Treasurer
9/2/99	O'Conner, Mr.	Local 2 organizer
8/26/99	Murphy, Dr. Brian	San Francisco State University economist
8/26/99	Potepan, Dr. Michael	San Francisco State University economist; Urban Institute, Director
8/19/99	Trutner, Leslie	Deputy City Attorney, Mayor's Office of Housing
8/19/99	Harrington, Kathleen	Golden Gate Restaurant Association
8/5/99	Sanchez, Veronica	Port
8/5/99	Losavoight, Mark	Port
8/5/99	Monks, Dave	Airport

Living Wage Task Force Testimonies

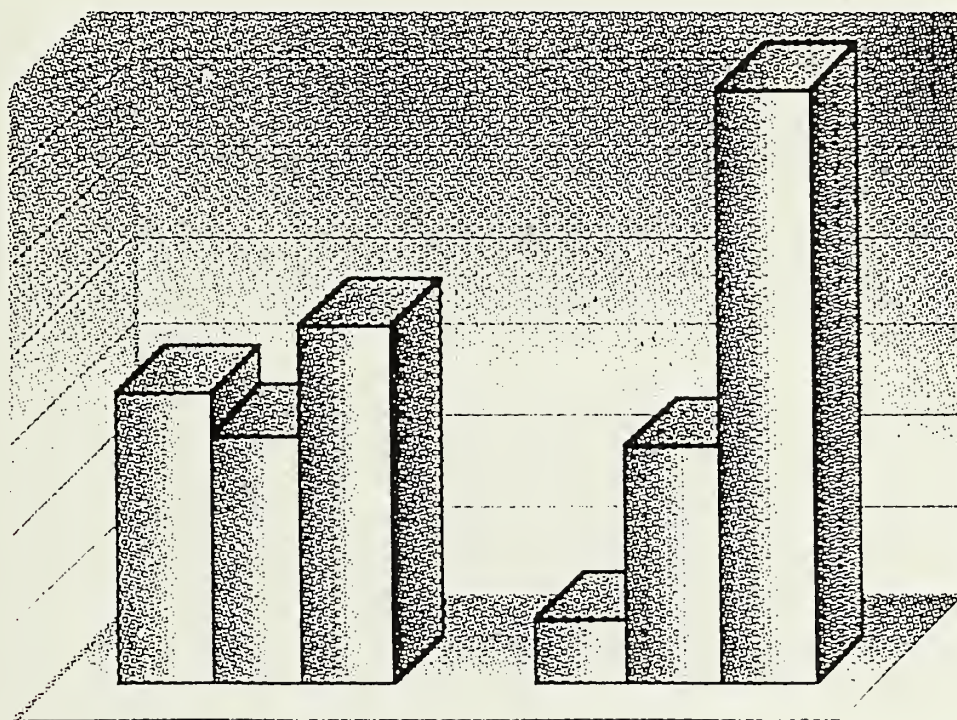
8/5/99	Vasquez, Laurie	Airport
8/5/99	Dunn, David	Airport
8/5/99	Jessen, Paula	Deputy City Attorney, Airport
8/5/99	Marvell, Allen	Host Marriott
8/5/99	McGinn, Adrian	airport café operator, subcontractor of Host Marriott; owner, Potrero Hill deli
8/5/99	DeLucchi, Tony	Real Estate Department, Director of Property
8/5/99	Fong, Jackie	Recreation & Park
7/8/99	O'Malley, Robert	Living Wage Coalition
7/1/99	Moran, Andy	Public Utilities Commission, General Manager
7/1/99	O'Malley, Robert	Living Wage Coalition
7/1/99	Hayashi, Christine	Public Utilities Commission, Deputy City Attorney
7/1/99	Monks, Dave	SFO Public Affairs
6/24/99	Reich, Dr. Michael	UC Berkeley professor, author of alternate economic analysis of living wage study
6/24/99	O'Malley, Robert	Living Wage Coalition
6/17/99	Port	letter from Port delivered by employee
6/10/99	none	
6/3/99	Alioto, Nuncio	Port tenant
5/27/99	McGinn, Adrian	airport café operator, subcontractor of Host Marriott; owner, Potrero Hill deli
5/20/99	Schoenberger, Erica	Johns Hopkins University
5/6/99	Harrington, Kathleen	Golden Gate Restaurant Association

Living Wage Task Force Testimonies

4/29/99	Hobbs, Helen	Tia Margarita, owner
4/29/99	Fog City Diner	owner
4/29/99	Leslie, Kevin	Pres. Golden Gate Restaurant Assoc.; head of Franciscan Restaurant @ Fisherman's wharf
4/29/99	Lehman, Robert	economic analyst; involved with San Franciscans for Tax Justice
4/29/99	Costello, Mary Ann	Fisherman's Wharf Association
4/29/99	Lockley, Jolyn	food services industry recruiter
4/29/99	Harrington, Kathleen	Golden Gate Restaurant Association
4/22/99	Potepan, Dr. Michael	San Francisco State University economist; Urban Institute, Director
4/22/99	Schmidt, Mr.	
4/22/99	Taylor, Mark	small business owner doing business with the City
4/22/99	Harrington, Kathleen	Golden Gate Restaurant Association; Harrington's Bar & Grill, owner
4/15/99	Bruce, Ken	Budget Analyst's Office
4/15/99	Herman, Amy	Sedway Group
4/15/99	Chu, Linda	Economic Research Associates
4/8/99	Thomasson, Virginia	Tax Collector's Office
4/8/99	Mosher, Mark	Committee on Jobs
4/1/99	Ward, Doris	Assessor
3/25/99	Matthias, Jim	Chamber of Commerce
	Smith, Pierre	public

THE LIVING WAGE IN SAN FRANCISCO

Analysis of Economic Impact, Administrative and Policy Issues



October 1999

A San Francisco Urban Institute Report

Produced by:

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Preface

This report examines the economic, budgetary, and administrative implications of a legislative proposal to amend the San Francisco Administrative Code to provide that a prescribed minimum level of compensation (a "Living Wage"), be paid to certain employees of contractors providing services to the City and County, and to certain employees of parties who lease property from the City and County. The San Francisco Urban Institute has conducted this study under contract to the Department of Administrative Services of the City and County of San Francisco, for delivery to the Supervisors' Task Force on the Living Wage and the elected leadership of the City and County. We have used as our text the draft legislation by Supervisor Tom Ammiano, dated May 3, 1999.

In drafting this report, our staff has benefited from the cooperation of many staff from the agencies and departments of the City and County of San Francisco. We are particularly indebted to: John Clark of the Department of Administrative Services, staff to the Supervisors' Task Force on the Living Wage, for his tireless support of all elements of our study, and particularly for facilitating the surveys which provided critical data; all those City and County department and agency staff who ensured that data was delivered to us in a timely manner; Sally Kipper and Dave Curto of the Department of Human Services, and countless other agency staff who helped us understand the arcane particulars of city contracts.

We are also indebted to the various advocates and partisans on every side of the Living Wage issue. They gave us their best analysis and arguments, led us to better understand the difficult dilemmas in interpreting data, and never allowed us to forget the human meaning of this policy issue, for employees and employers alike. Finally, we owe a real debt to analysts across the country who shared their work with us, work which helped us define both methods and parameters of our study, and gave us a comparative sense of what counts. Of special significance is the work of Professor Michael Reich and his colleagues at the University of California at Berkeley, and Professor Richard Sander at the University of California at Los Angeles.

Finally, just a note on methodology. There is a temptation--especially among academics--to turn any policy analysis into a discussion of method, and spend much of our time elaborating how we got to our conclusions. While it is inevitable that a study like this one invites a critique of methodology, we have tried to focus the body of our report on the substantive outcomes, and the significant policy options that emerge from our analysis. We have reserved the Appendix for an elaboration of our methodological choices, and the particular data problems we faced.

It will suffice for the moment to indicate that we used two different methods in calculating the estimated costs of the proposed Living Wage ordinance, and worked with both in reaching our best judgement on actual anticipated costs. First, we used survey

data from two questionnaires distributed by city agencies: one to city service contractors by the City Purchaser's Office, and another to property lease holders by the Department of Administrative Services. Second, we used administrative data from city agencies and departments, in which we examined actual city contracts and contract budgets to determine aggregate wages and benefits.

Finally, we benefited from the work on the San Francisco Living Wage proposal already completed by Dr. Reich and his colleagues, where costs and benefits were calculated by using wage rates for appropriate service industry "clusters," and estimating the aggregate differences between current wages/benefits and those proposed by the ordinance. We were able to use elements of this method, quite standard in social scientific analysis, to cross check our own sources, and we found the Reich analysis helpful in orienting our own.

Introduction:

San Francisco's proposed Living Wage Ordinance would amend the city and county's Administrative Code to ensure that broad categories of employees working for contractors providing services (but not "goods"), to the city would be paid a minimum wage beyond that mandated by state and federal law. The proposed legislation sets the wage rate at \$11.00 an hour. Further, the legislation would extend this same wage requirement to entities leasing property from the City and County. Finally, the legislation mandates certain minimum vacation days, aims to provide health benefits (or additional wages for purchasing health benefits), to covered workers, and mandates that hours of service required by recipients of General Assistance be calculated on the basis of the Living Wage.

The proposed Ordinance is based on models developed in 27 other American cities (six in California alone), that have adopted Living Wage legislation. As in these other cities, San Francisco's proposed Ordinance would ensure that persons performing work for the public, under contracts between the city and external entities, would be paid a wage more adequate to support their families than is possible with their current wages. At \$11.00/hour, San Francisco's proposed Living Wage is nominally higher than that of other cities, but is roughly equal to other rates when controlled for relative costs of living in those cities (see Appendix A).

While comparable when measured in cost-of-living terms, San Francisco's proposed \$11.00 does mean a significantly larger percentage increase over federal and state minimum wage than the living wage set in other cities. Further, it does mean that the dollar impact on employers is higher than that of other cities.

San Francisco's proposed Ordinance differs from those in other cities in two other regards. First, San Francisco's Ordinance would cover both for-profit and non-profit service providers, while most other cities restrict coverage to for-profit providers. Second, San Francisco's proposed Ordinance also covers workers in firms holding exclusive leases to operate businesses on City and County property. This includes

leaseholders at the Port of San Francisco, the San Francisco International Airport, as well as the city's Recreation and Parks Department and several other agencies. Most other cities do not cover such leaseholders, with the exception of Los Angeles (which does cover categories of "concessionaire" workers at Los Angeles International Airport and the Harbor).

San Francisco's Living Wage proposal emerges out of a concern that wages currently paid to persons performing critical services to the city may not be adequate to pay for housing, food, and medical care for their families. The most recent best estimate was that a family of one working adult and one child would require roughly \$14.50/hour to provide for themselves in San Francisco.¹ There is no magic in this number, of course, and no one family type among those currently earning below the federal poverty level (currently calculated at \$16,660 annual income for a family of four). National numbers—or even Bay Area numbers—may underestimate the costs of living in San Francisco.

This is especially so in housing. If a person were to spend 33% of his or her income renting a studio apartment for \$1,200 a month, he or she would have to earn \$22.00/hour to cover the rent.² With vacancy rates around 2%, the pressure on poor families to share housing or live in substandard housing is enormous. One of the striking facts about low wage workers in San Francisco is how many of them live in households where there are several working persons.

No one disagrees that San Francisco is an extraordinarily expensive city in which to live, in a region marked by increasing income inequality. The Living Wage proposal is one approach to the dilemma of low wages in a high cost city. Another would be a comprehensive local Minimum Wage affecting all employees in San Francisco, an option not prohibited by state or federal law. Yet another would be a program expanding the use of the federal Earned Income Tax Credit program, targeted precisely at low wage workers. What these programs all propose is elevating the annual earnings of those currently working below the poverty level.

Beyond the intention of raising wages, Living Wage proposals have other purposes. They create a model for just employment, or a package of wages and benefits which represents the City and County's best judgement about what ought to be minimally acceptable in the city. Most Living Wage proposals aim to reduce the attraction of contracting out city services for purely financial motive, where savings are produced because external contracting firms often pay less in wages and benefits than what is earned by unionized city workers. Finally, Living Wage proposals aim to improve the quality of contracted services to the public, by stabilizing a better-paid work force among service providers.

¹ \$14.50 is the Self-Sufficiency Wage developed by Wider Opportunities for Women, cited by ABAG and Michael Reich.

² This figure is in alignment with the rate of pay required to rent in San Francisco developed by the National Low Income Coalition in "Out of Reach: The Gap Between Housing Costs and Income of Poor People in the U.S.," September 7, 1999.

We have been asked to provide an analysis of San Francisco's proposed ordinance with regard to both direct and indirect costs and benefits. Further, we analyze the demographic breakdown of workers affected by the ordinance, as well as the secondary impact of the ordinance on low-wage labor markets. Finally, we explore some of the policy choices prompted by our analysis, with regard to the scope and scale of the ordinance, the wage and benefit rates, the administrative costs required to effectively manage the proposed program, and alternative approaches to reducing income inequality.

REPORT ADDENDUM

Economic Impact of San Francisco Living Wage Proposal

Introduction

This Addendum amends and updates our October 7, 1999, report to the San Francisco Living Wage Task Force, the Board of Supervisors and the Mayor of San Francisco, on the economic impact of the currently proposed San Francisco Living Wage ordinance.

This Introduction seeks to clarify what the Addendum does and does not address. We also will clarify the process through which we will amend the existing report to a final and comprehensive document. This Addendum responds to several lines of inquiry that emerged in the discussion of our initial report. These lines of inquiry fell into three major categories.

First, there are matters of interpretation, where our original analysis was rooted in one reading of the proposed ordinance—and others have argued that alternative interpretations would have alternative fiscal consequences. Calculations of the cost of **Medical Benefits and Compensated Time Off** fall into this category. Second, there were areas of analysis where we did not originally venture conclusions—like the effect of “horizontal” wage push—where the Task Force sought our assistance. Finally, there are matters of substantive analysis, where errors in the data or the calculations would change the anticipated outcomes. Calculations of the **payroll costs** associated with the ordinance, and calculations of the **number of covered workers** in the leaseholders side of the equation, fall into this category.

We have concentrated our efforts in addressing these issues. There are other issues where there may be substantive disagreement—the calculation of the percentage pass-through from for-profit service providers, as an example—where we have concluded that no change in our original analysis is warranted. We will try to identify those issues where we have chosen to retain our original calculations.

Finally, there are derivative numbers that change whenever other calculations change. An example of this is the anticipated wage cost of the ordinance at \$10.00 and \$9.00, in which numbers obviously change if you choose to recalculate the number of affected workers in any particular category. We have not done those derivative calculations for this addendum, as they are not particularly germane to the discussion of costs at the \$11.00 level. We will, however, go back into the original October 7 report and amend those derivative numbers in preparing a final amended report for public distribution.

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**Living Wages and the San Francisco Economy:
The Benefits and the Costs**

First Release

Michael Reich***

Peter Hall**

Fiona Hsu*

Bay Area Living Wage Research Group

Center on Pay and Inequality
Institute of Industrial Relations
University of California
Berkeley, CA 94720

June 1999

***Ph. D., Professor of Economics, UC Berkeley

**Ph. D. student, City and Regional Planning, UC Berkeley

*B.A., Economics and Sociology, May 1999, UC Berkeley

Background and main findings

Background

Since 1996 over 35 cities in the United States, including eight in California, have adopted Living Wage laws for workers on municipal service contracts, and an equal number are considering such a policy. A Living Wage level, defined as a self-sufficiency standard, has been estimated for San Francisco at upwards of \$14 per hour for a full-time worker with one or more dependents. Most of the ordinances, including the proposal for San Francisco, fall short of this standard.

This report discusses the impact of the parts of the proposed living wage ordinance that cover the employees of city service contractors, both the for-profit firms and the nonprofit organizations, as well as the workers who are home health care aides. We examine each of these groups separately because their situations differ considerably.

A subsequent release of this report, still in progress, will also address the part of the proposed ordinance that covers the city's lease contracts. Most of the lease contracts involve city-owned land in the Port of San Francisco and at San Francisco International Airport. Although this component of the proposed ordinance would cover a larger number of workers, it will only generate small costs to the City's budget, and only insofar as lease values are affected.

Main Findings

Drawing upon a detailed analysis of current city contracts and other data sources, we have estimated the principal benefits and costs of the proposed ordinance to the city's budget, to its economy and to its people.

- *How high is the living wage and what does the ordinance cover?*

The proposed Living Wage Ordinance, as currently being considered by the San Francisco Board of Supervisors, calls for a wage of \$11 per hour, indexed to future inflation, and health benefits or additional pay (as provided by a health coverage cost formula). This standard is higher in nominal terms than any others yet enacted. After controlling for different costs of living in other cities, it becomes similar to or lower than living wage levels recently enacted in Baltimore, Boston and Miami, and about ten percent higher than the levels established recently in Los Angeles, Oakland and San Jose.

The proposed ordinance covers employees of organizations who work on service contracts with the City of San Francisco; it does not apply to employees working on other projects. It also covers home health care workers employed through the Independent Health and Social Services (IHSS) program and employees of companies that lease property from the City. The stated purposes of the ordinance are to improve the living conditions of the targeted workers and to improve the quality of city services for all of the city's residents.

- *Does San Francisco need a Living Wage Ordinance?*

A Living Wage Ordinance would help combat the declining affordability of living and raising a family in the City. We estimate that approximately 32 percent of the workers in the Bay Area earn less than \$11 per hour. With the continued polarization of wages and decline of middle-income jobs, low-wage workers cannot keep up with the City's rising living costs. San Francisco ranks the highest among Bay Area counties in the percentage of children living in poverty and it is well above average among U.S. cities in earnings inequality measures.

- *How many contractors and workers are covered by the ordinance?*

Excluding exempted goods contractors, small businesses and companies that already are required to pay prevailing wages, over 200 for-profit and nearly 300 nonprofit organizations have service contracts, worth a total of \$728m, that are covered by the proposed ordinance. Three-fourths of the contract dollars go to only 100 contractors. About 12,400 employees of profit-making and nonprofit organizations work on these city contracts.

In addition, about 6,650 home health care workers and over 30,000 employees who work on city property are also covered by the proposed ordinance.

- *How many workers would benefit and in what amount?*

We estimate that about 5,200 employees of the city's service contractors would benefit from the proposed Living Wage ordinance. About 4,500 workers would receive an average pay increase of \$2.43 per hour or over \$4,300 per year. A smaller, partly overlapping number of workers--4,200—would gain by getting health benefits. A further 6,650 home health care workers, who work a total of 7.6 million hours per year and are employed through the IHSS program, will also benefit, receiving an additional \$4 per hour.

In total, nearly 12,000 low-wage earners working in San Francisco would receive an additional \$50.3m in wages and \$11.2 million in health benefits each year. The benefiting workers represent about 2.5 percent of total employment in San Francisco. We are still in the process of estimating how many additional employees who work on city property would obtain pay increases; those numbers could be of comparable magnitudes.

- *What is the demographic composition of the benefiting workers?*

Relative to the city's labor force, the workers receiving mandated pay increases will be primarily female (61 percent overall and over 70 percent among home health care workers), and disproportionately Latino (21 percent) and Asian and Pacific Islander (30 percent). The benefited African-American workers are proportional to their numbers in the city's workforce (11 percent).

- *Would there be indirect pay increases because of "wage push"?*

There may be some indirect benefits of the Living Wage ordinance to additional workers. Employers may be pushed into providing pay increases that are not required by the proposed

ordinance to some workers who are now paid just below \$11 or up to \$13 per hour. We estimate this wage push effect will be experienced by an additional 1,350 workers and amount to \$3.7m per year.

- *How much will employers' costs increase?*

If the covered service contractors made no adjustments other than to increase their employees' pay rates and health coverage, we estimate that the direct costs of the proposed Living Wage ordinance would amount to a payroll increase of \$31m.

This increased cost includes the greater health coverage but not the wage push, and divides roughly equally between profit-making companies and nonprofit organizations. It represents about four percent of the last complete (1997-8) year's \$728m total cost of contracts for covered firms and organizations. As another comparison, the City's General Fund is expected to grow by 5.9 percent next year.

Economic theory as well as experience in other cities predicts that economic entities make adjustments in response to changes in incentives. We expect to see changes in competition for bids, in reduced worker turnover and absenteeism, and in the utilization of human resources, so that the cost increases in reality would be significantly lower. The adjustment possibilities will vary considerably among for-profit and nonprofit organizations and will grow over time.

- *How much of the cost increases would be passed through to the city's budget?*

Based upon other cities' experiences, we estimate conservatively that most of the increased costs to nonprofit organizations, and no more than one-third of the increased costs to profit-making companies, would need to be passed on to the city's budget. Some nonprofit organizations may be able to absorb some of the cost increases, but it seems prudent to assume otherwise. The total for-profit and nonprofit pass-through costs amount to \$21.3m.

The city would also have to pay its share of the increase in home health care costs not covered by Federal and state sources. This amount is \$16.7m for the IHSS workers.

The 4,200 workers who gain health insurance will make reduced demands upon the city's public health budget. This saving could reduce city costs by about \$5.7m.

The expected increased costs to the City therefore add up to \$32.3m: 21.3m for workers on contracts plus \$16.7m for home health care workers less \$5.7m savings in public health care costs.

This estimate does not include the lease contracts, but we expect such costs to be very small. This estimate also does not include any pass-throughs because of wage push. Costs would be reduced as productivity gains and increases in the quality of city services would be expected with the increase in worker pay. Any waivers granted to contractors would reduce both the costs and the benefits. State and Federal payments for antipoverty programs would be reduced by a small amount, producing minor savings for those government entities.

- *Would the city economy benefit?*

Based upon the experience in other cities, we do not expect that the proposed ordinance would have adverse impacts on the city's business climate, on unemployment, or the relocation of economic activity outside the city. The quality of services should improve.

The proposed ordinance would result in additional income for the city's economy of about \$20.8m per year (and therefore additional sales tax revenue). This benefit derives from two sources. The City would in effect leverage external funds that are mandated to pay a considerable portion of the increased home health care costs, and low-wage households tend to spend a higher proportion of their income within the city and on locally produced goods and services.

- *Do the benefits outweigh the costs?*

Putting all the benefits and costs together and comparing them is complex because of the unequal distribution of who benefits and who pays. The experience for the nonprofit contractors is especially difficult to predict and we expect that waivers for some will be desirable. Nonetheless, it is clear that for a modest investment of the city's budget the proposed ordinance would meet its goals of raising living standards for the designated beneficiaries while improving the quality of city services for all. It would do so without harm and with probable benefit to the city's economy. We expect that the completion of our analysis of the city's lease contracts will reinforce this conclusion.

- This study was carried out by researchers from the University of California, Berkeley, Institute of Industrial Relations. We have been studying living wage and pay and inequality issues for the San Francisco Bay area and the wider economy. To conduct this study, we have used the city's list of contracts as well as widely accepted government data on pay and employment as our sources. This report represents the first comprehensive attempt to determine the impact of the San Francisco Living Wage Ordinance on a sector-by-sector basis.

